



Planning Enforcement and Monitoring Protocol

Minerals & Waste Planning Development

February 2022



S

ENVIRONMENT, TRANSPORT & INFRASTRUCTURE

**PLANNING ENFORCEMENT AND MONITORING PROTOCOL
(Minerals & Waste Development)**

FEBRUARY 2022

For review by February 2027

Contents

Section	Page No
1 Purpose of this document	6
Guidance	
Openness	
Information	
2 Introduction to the county planning function	8
Responsibility	
3 The monitoring and enforcement function	9
Monitoring	
Enforcement	
Investigating site of unauthorised development	
4 Dealing with enquiries and complaints	11
How to raise a complaint or enquiry	
Recording and acknowledging complaints and enquiries	
Confidentiality	
Equality & diversity	
Joint working with Local Authorities & National Organisations	
Procedures	
Dissatisfaction with the service	
5 Classifying planning breaches	17
6 Approach to enforcement	18
Negotiation	

9

Cessation of unauthorised development

Retrospective planning applications

7 Standards when considering enforcement action 20

Reasonableness, proportionality and expediency

Deciding whether to take enforcement action: a last resort

Discretion

8 Enforcement powers under the Town and Country Planning Act 1990 22

Rights of Entry (s196A)

Planning Contravention Notice (s171C(1))

Breach of Conditions Notice (s187A)

Enforcement Notice (s172E(1))

Stop Notice (s183(1))

Temporary Stop Notice (s171E(1))

Prosecution

Court Injunctions (s187B)

Direct Action (s178)

9 Scheduling monitoring visit to authorised sites: mineral and waste management 25

Legislation

Mineral Monitoring: Site Visit Reports

Waste Management Monitoring: Site Visit Reports

10 Further consideration of enforcement action 29

European Convention on Human Rights (Human Rights Act 1998)

Pursuing a prosecution

Working with Regulatory Investigatory Procedures Act 2000

Potential for use of the Proceeds of Crime Act 2002

9

List of figures

Figure 1 Enforcement procedures **9**

List of tables

Table 1 Prioritising complaints **12**

Table 2 Scheduling visits to mineral (mining and landfill) sites **26**

Table 3 Scheduling visits to waste management sites **27**

List of appendices

Appendix 1 Guidance: legislation and policy documents **31**

A. National Policy Guidance **32**

B. Local Policy Guidance

Appendix 2 County Council Development (Regulation 3) Monitoring and Enforcement Protocol **33**

Appendix 3 Glossary **36**

Appendix 4 Contact details **38**

1. Purpose of this document

Guidance

- 9
- 1.1 Surrey County Council's ("SCC") Planning Enforcement Protocol ("*the protocol*") is set out as guidance for members of the public, developers and other interested parties in relation to the principles and standards the County Planning Authority ("CPA") will seek to apply in pursuance of its planning monitoring and enforcement responsibilities: which include mineral and waste development. The protocol will also assist the CPA in considering the most appropriate action to take specific to enforcement and monitoring matters.
 - 1.2 The protocol provides general guidance on the factors that the CPA will take into account when deciding whether to take enforcement action in relation to a breach of planning control. Each individual case will be considered on its own merits against not only the protocol but also the relevant Development Plan and Government guidance before any decision is taken.
 - 1.3 This protocol sets out the CPAs approach to seeking planning compliance at mineral and waste management sites within Surrey and consists of two broad elements. The first relates to the proactive monitoring of authorised mineral and waste management sites and the second sets out how enquiries or complaints that allege breaches of planning control have occurred will be investigated and addressed where appropriate.

Openness

- 1.4 Officers will advise a complainant and those involved in carrying out unauthorised development of the protocol that applies. The confidentiality of complainants and any sensitive business information shall not be published within the public domain. Officers will seek to maintain dialogue with operators and landowners in order to achieve an agreed solution. Where enforcement action is taken through the issue of a formal notice, these matters will be reported to the Planning and Regulatory Committee annually.

Information

- 1.5 This document defines the CPA's monitoring and enforcement procedures. It is given great weight if a complaint is received, particularly those escalated via the Council's own complaints procedure. It is not a full and authoritative statement of the law and does not constitute professional and/or legal advice. Any statement in this document does not replace, extend, amend or alter in any way the statutory provisions of the Town and Country Planning Act 1990, National Planning Policy Framework (NPPF) or any subordinate legislation made under it or statutory guidance issued in relation to it.
- 1.6 Although SCC has made every effort to ensure that the information in this document is correct, changes in the law and the nature of implementation

mean that the information in this document cannot be guaranteed as accurate until it is next reviewed.

2. Introduction to the County planning function

Responsibility

- 9
- 2.1 Surrey County Council as the CPA has responsibility for discharging the development management planning function(s) associated with minerals extraction, management of waste, and SCC's own development under the provisions of the Town and Country Planning General Regulations 1992. The planning functions relating to mineral and waste matters are often referred to as "county matters" and are defined by Schedule 1 of the Town and Country Planning Act 1990 and the Town and Country Planning (Prescription of County Matters)(England) Regulations 2003.
- 2.2 This document covers minerals and waste monitoring and enforcement matters. The monitoring and enforcement of SCC's own Regulation 3 development is addressed within a separate document, a copy is attached at Appendix 2: County Council Development (Regulation 3) Monitoring and Enforcement Protocol, which will be reviewed by April 2022.
- 2.3 The CPA has statutory powers and duties relating to county matters. District and Borough Councils deal with all other planning matters including:
- Fly tipping and abandoned cars
 - Developments permitted by District or Borough Councils, this includes the importation and exportation of materials to develop sites where the materials are an integral part of the development and are necessary for it to be carried out
 - Agricultural determinations
 - Where a mixture of uses, including both county and non-county matters take place on a site, the relevant District or Borough Council has jurisdiction to address both planning applications or enforcement action with agreement of the CPA, but the CPA is unable to address such mixed uses in this way unless the development is considered to be 'wholly or mainly' a County matter.
 - Housing and commercial development
 - Untidy land

3. The monitoring and enforcement function

Monitoring

- 3.1 For all operational and dormant minerals sites and operational waste sites with planning permission granted by the CPA, officers undertake site monitoring visits which are an important tool in proactively seeking to address breaches that have occurred whilst checking compliance with conditions imposed as part of such permissions and to identify any unauthorised development and aim to regularise it as appropriate to protect the environment and public amenity.
- 3.2 There will be no formal monitoring involving measurement of matters such as dust, noise or vibration as a matter of course, but if concerns are raised and it is considered appropriate by the Planning Development Manager, technical assessment will be sought by independent consultants.
- 3.3 The CPA had been proactive in monitoring such sites for 15 years before monitoring became mandatory in 2006 through the requirements of 'The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2017' and the 'Waste Framework Directive (2008/98EC)' and 'The Waste (England and Wales) Regulations 2012'.

Enforcement

- 3.4 The CPA has responsibility for taking whatever enforcement action may be necessary where breaches of planning control are identified where it is in the public interest. However, the decision to take enforcement action is discretionary, where it is considered expedient, having regard to the development plan and any other material considerations.
- 3.5 The statutory framework and guidance governing planning enforcement is principally provided by the following:
- Town and Country Planning Act 1990
 - Planning and Compensation Act 1991
 - Town and County Planning (General Permitted Development Order) 2015
 - [Procedural Guide: Enforcement notice appeals - England – 13 October 2021](#)
 - Planning and Compulsory Purchase Act 2004
 - Town and Country Planning (Fees for applications and deemed applications) Regulations 2017
 - Department for Business Innovation and Skills Regulators' Code April 2014
 - [The Crown Prosecution - The Code for Crown Prosecutors October 2018](#)
- 3.6 When carrying out its enforcement function, the CPA will undertake appropriate and proportionate enforcement action to deal with confirmed breaches of planning control, with procedures and decisions having regard to legislation guidance and policy, details of which can be found in Appendix 1.

- 3.7 The protocol complies with the National Planning Policy Framework (NPPF) adopted July 2021, paragraph 59 of which states:

‘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.’

- 3.8 Breaches of planning control may be brought to the attention of the CPA through either complaints made by members of the public, Parish Councils, District or Borough Councils, elected Members, private/charitable organisations and/or other regulatory bodies such as the Environment Agency, but can also arise by monitoring or enforcement officers identifying breaches of planning control.

Investigating sites of unauthorised development

- 3.9 In addition to the monitoring of sites with planning permission, sites known to have unauthorised development are added to our site monitoring schedule: see Section 9.
- 3.10 Planning breaches on all sites that are identified through such visits are raised with operators and landowners and compliance is sought through a process of informal discussion and encouragement. This could result in either a negotiated cessation, the submission of either a retrospective planning application to obtain planning permission or submission of sufficient evidence to obtain a Certificate of Lawful Use or Established Development, either through planning application or at appeal. Where such actions fail to achieve the desired effect, then formal enforcement action may be taken, which may result in the issue of an enforcement notice or other measures.

4. Dealing with enquiries and complaints

How to raise a complaint or enquiry

- 4.1 The CPA should be contacted when there is concern that a breach of planning control has occurred at a mineral or waste site that benefits from planning permission or a Certificate of Lawfulness of Existing Use or Development (CLEUD) issued by the CPA or where mineral or waste related development is suspected of taking place without the benefit of any planning consent. These concerns will be investigated on a priority basis dependent upon the risk (see Table 1 Prioritising Complaints). The CPA will seek co-operation to resolve breaches of condition or unauthorised development and use formal enforcement powers as a last resort.
- 4.2 Wherever possible, email is the best way of communicating with the CPA. Those wishing to enquire or make a complaint about a site should provide the following details as a minimum:
- i) Their name, contact phone number and email or postal address.
 - ii) The time and date of their communication.
 - iii) The site name and postal address of the site in question.
 - iv) The date and time of the problem
 - v) Full details of the issue.
 - vi) If available, photographs may be provided.
- 4.3 The Department is also contactable by phone and post. All contact details are provided on the [SCC website](#) and at the end of this document under Appendix 4.

Recording and acknowledging of enquiries and complaints

- 4.4 Details of enquiries and complaints will be recorded and acknowledged (*by telephone/email or letter*), within 3-working days of receipt, in which time it will be allocated to a Monitoring Officer in the case of authorised sites or to a Planning Enforcement Officer where the site is unauthorised.
- 4.5 Upon receipt of a complaint, the CPA will make an initial risk assessment to classify the complaint: see Table 1.

Table 1 – Prioritisation of enquiries & complaints

Priority	Risk	Examples of public concern
Low	Minor breaches of planning conditions.	A failure to turn off lights on site
Medium	Major breaches of planning conditions or Unauthorised activities and/or development with the potential to cause harm to the environment.	Noise and disturbance
High	Unauthorised activities and/or development posing a significant risk of irreversible harm to public amenity and/or the environment.	The disposal of mixed waste materials causing the risk of irreversible harm to the environment

4.6 See Fig. 1 Processing of Enquiries and Complaints for the decision-making process.

Fig. 1: – Processing of Enquiries and Complaints and Site Monitoring findings

(See Appendix 5, Fig. 1 to see this represented as a diagram)

Steps for processing of enquiries, complaints and site monitoring findings

1. Receive enquiry/complaint (book in complaints file and acknowledge **within 3 working days of receipt**) or site monitoring report.
2. Is it a county matter? If no, then Inform Complainant & District/Borough Council & Environment Agency as appropriate and take no further action; otherwise proceed to step 3.
3. Commence investigations **within 10 working days**. Allocate Officer, Contact landowner/operator, plan site visit and check records.
4. Is there a breach in planning control? If yes then go to step 5, otherwise take no further action and inform parties in writing within 15 working days and end process.
5. Update complainant of progress in writing **within 15 working days of determination**. Write to operator/send PCN and undertake Land Registry search. Write to operator/send PCN/s330 and undertake Land Registry search.
6. Could unauthorised development be acceptable on planning merits and in accordance with Development Plan/NPPF? If yes go to step 8; If no go to step 7.
7. Is negotiation/relocation within site/redesign likely to be successful? If yes, then negotiate and go to step 8, if no go to step 11.
8. Request planning application.
9. Has application been submitted? If yes then go to step 10, if no go to step 13.
10. Determine application – if granted then end process monitoring site and conditions, if refused go to step 11.
11. Is risk of significant harm caused by the breach in our professional judgement? If no go to step 13, otherwise proceed to step 12.
12. Is enforcement action expedient? If no then go to step 13. If yes then **initiate enforcement action**. Act in accord with SCC's Constitution (Scheme of Delegation).
13. Act in accord with SCC's Constitution (Scheme of Delegation).

Note:

Note: legal advice may be sought at any point in this process and Environmental Impact Assessment screening opinion will also be sought.

Confidentiality

- 4.7 For the purpose of enforcement action all complainant details (*name, address, contact details etc.*) provided to the CPA will be treated as confidential and in all cases handled in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulations, The CPA may be required to release details by law.

Equality

- 4.8 The CPA will promote equality of opportunity and no individual will receive less or more favourable treatment on the grounds of gender, sexual orientation, disability, marital status, ethnicity, race, age or religion and will work in accordance with the Equality Act 2010.

Joint Working with Local Authorities & National Organisations

- 4.9 In most cases a joint working approach is usually maintained with local, bordering, and national authorities and information will therefore be shared with the relevant district and borough councils and Environment Agency, and sometimes other organisations, including the Police, HM Revenue and Customs, The Department for Transport and the Driver and Vehicle Licensing Authority (DVLA).
- 4.10 Joint investigation of sites may be arranged with the Environment Agency and the district and boroughs and if unable to attend they will be advised of the CPA's findings. The operator/landowner/occupier will be advised of planning breaches in writing and other authorities will receive copies of such communications when appropriate.
- 4.11 Breaches of planning control that are investigated and are found not to constitute a 'county matter' will be referred to the relevant district or borough.
- 4.12 In certain circumstances, there may be occasions when the CPA's planning enforcement function overlaps or runs parallel to the different legislative functions of other authorities such as the Environment Agency or Natural England. Any enforcement action taken by the CPA will be based upon planning considerations and will not seek to substitute and/or duplicate legislative powers of different authorities.
- 4.13 Upon identifying a possible legislative contravention in relation to a different authority's remit, the CPA will notify that authority of the suspected contravention as soon as practicably possible.

Procedures

- 4.14 Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain the breach, the requirements of the CPA to put the matter right including time scales

and remind the developer of the enforcement powers the authority has available in respect of formal action.

- 4.15 A technical breach of planning control will be investigated and assessed as to whether it warrants enforcement action. The CPA may take enforcement action when a breach of planning control is considered unacceptable. In deciding whether to take enforcement action in relation to a breach of condition, the CPA will have particular regard to conditions that were imposed to protect and/or mitigate environmental or amenity impacts, without which planning permission would not have been granted by the CPA. The scale and persistence of the breach of condition will also be taken into account when determining the nature of any enforcement action.
- 4.16 As national Planning Policy Guidance advises, enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. Local planning authorities should usually avoid taking formal enforcement action where:
- i) There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
 - ii) Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
 - iii) In its assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation.
- 4.17 The rights of appeal of the operator/landowner/occupier against any formal notice will be clearly explained.
- 4.18 Before any formal enforcement action is undertaken, operators/landowners/occupiers will be invited to discuss the issues with the officer, unless immediate action against the breach of planning control is considered necessary.
- 4.19 Formal action will be expedited where there is inadequate evidence of steps being taken to resolve the problems identified.

Dissatisfaction with the service

- 4.20 Should an individual not be satisfied with the outcome of a specific investigation into an alleged breach of planning control, they may in the first instance write to the Planning Development Manager expressing their concerns and/or requesting a review of the investigation.
- 4.21 If a complainant is concerned about progress at a particular site then they may also speak to their County Councillor who will be able to pursue matters with officers on their behalf.
- 4.22 A member of public may use the [County Council's Complaints Procedure](#) if they are concerned about the nature of action taken by the CPA where unauthorised

development has been alleged. If not satisfied with the outcome, the individual may then refer the case to the Local Government and Social Care Ombudsman (LGSCO). The LGSCO may refuse to investigate a complaint if the complainant has not followed the County Council's internal complaints procedure first.

5. Classifying planning breaches

5.1 Monitoring and Enforcement Officers are likely to encounter several types of planning breaches whilst undertaking their work:

Typical planning breaches include the following:

- i) A breach of a condition relating to an existing planning permission.
- ii) The carrying out of development in the absence of planning permission, where a planning application is considered likely to succeed.
- iii) The carrying out of development where no planning permission exists, and it is unlikely to gain planning permission.

5.2 When a breach is suspected, an assessment is undertaken as to whether the work constitutes development, which requires planning permission. It may not require planning permission if it constitutes Permitted Development ([The Town and Country Planning \(General Permitted Development\) Order 2015 \(as amended\)](#)), or is considered immune from enforcement action by virtue of the passing of time.

6. Approach to enforcement

Negotiation

- 9
- 6.1 The CPA, so far as possible, will deal with a breach of planning control informally and Officers will seek to rectify the breach through negotiation, either by cessation and remediation or if appropriate, through the invitation of submission of a retrospective planning application or a Certificate of Lawfulness of Existing Use or Development (CLEUD).
 - 6.2 The CPA will act to effectively address breaches of planning control unless it is apparent to the CPA that the negotiations should lead to a satisfactory remedy.
 - 6.3 Where the landowner/operator/occupier admits a breach of planning control and undertakes measures to rectify the breach, enforcement action may not be considered necessary.
 - 6.4 If the CPA, in seeking to remedy a breach of planning control, considers that a retrospective planning application is unlikely to be successful in regularising the breach, the CPA will inform the developer/landowner/occupier at the earliest opportunity.

Cessation of unauthorised development

- 6.5 When considering the appropriate course of enforcement action, the CPA will have regard to the criteria set out in Table 1. In the case of a significant risk of irreversible harm being identified the CPA will take enforcement action to mitigate the risk.
- 6.6 When determining the priority of a particular breach of planning control, weight will be given to the nature and scale of the breach and consideration will be given to the perceived impact of delaying enforcement action.
- 6.7 When there is unauthorised development consisting of waste materials being imported and deposited and stored or treated on land, either inert or non-inert waste, the unauthorised development may be required to cease or the use of a Temporary Stop Notice (TSN) or Court Injunction may be sought.

Retrospective planning applications

- 6.8 If a retrospective planning application to address unauthorised development is invited by Officers but not submitted, the service of an Enforcement Notice may be issued without further communication.
- 6.9 If a retrospective application has been invited by Officers and pre-application advice has been sought prior to submission, but the application is not subsequently forthcoming within a CPA specified timeframe, the service of an Enforcement Notice may take place without further discussion and due warning.

- 6.10 The submission of a retrospective planning application, which will be assessed on its own merits and determined in accord with relevant development plan policies and statutory guidance, does not guarantee that planning permission will be granted or that enforcement action will not be taken in the future.

7. Standards when considering enforcement action

Reasonableness, proportionality and expediency

- 9
- 7.1 There is no statutory duty to take action against a breach of planning control in any particular circumstances. Planning Authorities, of which the CPA is one, must consider the extent of harm that may or may not result from the breach and balance the impact of that development against the impact of taking enforcement action, which the National Planning Policy Framework (NPPF) states at paragraph 59 is discretionary with planning authorities required to act proportionately.
- 7.2 The pursuit of formal enforcement action may not always be expedient or reasonable. Where the County Council is the responsible planning authority, any decision not to take enforcement action following a breach of planning control will be agreed and recorded by the Planning Enforcement Team Leader and the Planning Development Manager after agreement with the CPA's Director of Law & Governance.

Deciding whether to take enforcement action: a last resort

- 7.3 The following will be considered:

- | | |
|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| i) Expediency | The primary consideration is the acceptability of the development in planning terms, which means having regard to the Development Plan and other material considerations |
| ii) Personal circumstances | Of the occupants of the site may influence the decision to take enforcement action |
| iii) Commensurate action | Enforcement action must be proportionate to the breach and degree of harm |
| iv) Retrospective applications | Applications can be submitted and/or encouraged where in accordance with the Development Plan |
| v) Immunity | Whether any breach might become immune from enforcement action, potentially leading to lawful use. |
| vi) Financial impact on the developer/landowner | This will be considered, but will not prevent action being taken if expedient. |

Discretion

- 7.4 The nature of enforcement action taken by the CPA in relation to a breach of planning control is within the discretion of the CPA and must be in the public interest.
- 7.5 The Planning Group Manager, Planning Development Manager and the Planning Development Team Leader may, following consultation with the Director of Law & Governance, determine whether or not to initiate planning enforcement action. Enforcement cases are not normally referred to the Planning and Regulatory Committee, though Members are kept advised of all enforcement action taken through annual reports. Borough and District Councils as the Local Planning Authorities (LPAs) deal with all other forms of development but may deal with waste matters where this has been agreed in writing with the CPA in cases where there are overlapping responsibilities.

8. Enforcement powers under the Town and Country Planning Act 1990

8.1 Rights of Entry (s 196A)

Planning Enforcement Officers and Monitoring Officers, who are authorised in writing, may at any reasonable hour and if they have reasonable grounds for their use, enter any land to ascertain:

- Whether there is or has been a breach of planning control on the land or on any other land;
- Whether any powers should be exercised in relation to the land or any other land; and
- Whether there has been compliance with any requirement imposed as a result of such power being exercised.

If necessary, planning enforcement officers can apply for a warrant to enter land under section 196B of the Town and Country Planning Act 1990.

It is a summary offence to willfully obstruct any person exercising a right of entry under S196A & B, punishable by a Level 3 fine in a magistrate's court.

8.2 Planning Contravention Notice (s 171 C(1))

Where it appears to the CPA that a breach of planning control may have occurred, the CPA may serve a Planning Contravention Notice (*PCN*) to gather information about operations on the land. Those served have 21 days to respond. Failure to comply with a PCN is a summary offence as is the giving of information which is false or misleading.

8.3 Breach of Condition Notice (s 187 A)

Where the CPA has granted planning permission subject to conditions, and one or more of the conditions have not been complied with, the CPA may serve a Breach of Condition Notice (*BCN*). The BCN may be served on any person who is carrying out or has carried out the development and any person having control of the land, requiring them to secure compliance with the condition(s) as specified in the BCN within a minimum of 28 days.

Failure to fully comply or to take the steps to comply with a BCN is a criminal offence. There is no right of appeal.

8.4 Temporary Stop Notice (s 171 E (1))

Where the CPA consider that there has been a breach of planning control in relation to any land, and it is expedient to stop immediately the activity (or any part of the activity) which amounts to the breach, the CPA can issue a Temporary Stop Notice (*TSN*). They should prohibit only what the CPA consider essential to safeguard amenity or public safety or to prevent serious or

irreversible harm to the environment in the surrounding area. It is an offence to contravene a TSN, which includes causing or permitting the contravention.

8.5 Enforcement Notice (s 172 (1))

The CPA may serve an Enforcement Notice (*EN*) where there appears to be a breach of planning control and it is expedient to issue the notice. The EN is served on the owners, occupiers and all other parties who have an interest in the land concerned. There is a right of appeal, before an EN comes into effect. It is an offence not to comply with an EN once the period for compliance has elapsed and there is no outstanding appeal. A person guilty of an offence is liable to conviction to an unlimited fine.

8.6 Stop Notice (s 183 (1))

Where the CPA consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an EN, it may, when it serves an EN or at a point after, serve a Stop Notice (*SN*) prohibiting the carrying out of that activity on the land to which the EN relates.

An appeal may not be lodged against a SN. The validity of a SN and the propriety of the decision to issue it may be challenged by application to the High Court for judicial review. Failure to comply is a criminal offence.

8.7 Prosecution

Criminal offences in relation to Enforcement Notices, Stop Notices and Temporary Stop Notices are either way offences, meaning the defendant may choose to be tried in either the Magistrate's Court or the Crown Court.

A person guilty of an offence where an EN, SN or TSN is not complied with is liable to a fine. In determining the amount of any fine, the court will have regard to any financial benefit accruing in consequence of the offence.

8.8 Court Injunctions (s 187B)

Where it is necessary or expedient the CPA may apply for an injunction to the High Court or the County Court, either as an alternative to taking enforcement action or in addition to an extant EN or SN. Injunctions may be sought to restrain actual or anticipated breaches of planning control irrespective of whether the CPA is considering or have exercised other planning enforcement powers. An injunction may be issued on an interim basis until a full hearing is undertaken, at which point it may be granted on a permanent basis.

An application for an injunction may be contested by the landowner or operator. The evidence in a case will be considered by a judge who will then make a decision to grant or not. The decision to grant an injunction is at the discretion of the judge.

Failure to comply with an injunction can lead to committal to prison for contempt of court.

8.9 Direct Action (s 178)

The CPA has the power to enter land and take the steps required by an EN where those requirements have not been complied with in the time specified by the notice.

The CPA may recover any reasonably incurred expenses in exercising its direct-action powers and until such time as they are recovered, they become a charge on the land.

8.10 Planning Register of Enforcement Action

Local planning authorities must maintain a register of enforcement and stop notices (section 188 of the Town and Country Planning Act 1990 and article 43 of the Town and Country Planning (Development Management Procedure (England) Order 2015). It is important that, as soon as possible, details of the following actions should be recorded on the register by the Borough and District Councils who maintain them and enable public inspection:

- i) Planning Contravention Notices
- ii) Temporary Stop Notices
- iii) Enforcement Notices
- iv) Stop Notices
- v) Breach of Condition Notices
- vi) High Court and County Court Injunctions

9. Scheduling monitoring visits to authorised sites: Mineral and Waste Management

Legislation

- 9.1 A schedule of monitoring visits to authorised mineral (Mining & Landfill) and waste management (non-landfill) sites is prepared annually, with the year running April to March.
- 9.2 The frequency of chargeable visits to the mineral sites is prepared in accordance with 'The Town and Country Planning (Fees for Applications and Deemed Applications Requests and Site Visits) (England) (Amendment) Regulations 2017'.
- 9.3 Scheduled visits to these sites are based on site operations and issues that have arisen over the previous year, see **Table 2 - Scheduling visits to Mineral Mining/Landfill sites**, and are based upon considerations that take into account the following factors:
- i) Scale & size of development.
 - ii) Complexity of site and number of permissions.
 - iii) Conditions requiring regular monitoring.
 - iv) Stage of development.
 - v) Progressive nature of site work.
 - vi) Identified breaches of planning control.
 - vii) Substantiated complaints

This results in each site being classified into one of the following:

- i) Category A – 1 visit.
 - ii) Category B – Between 2 and 4 visits.
 - iii) Category C – 4 - 6 visits.
 - iv) Category D – 6 - 8 visits.
- 9.4 Under the 2012 Regulations, each site may receive a minimum of 1 and a maximum of 8 chargeable site visits. Although additional site visits may be made, they may not be charged for. See Table 2 below.

Table 2 – Scheduling visits to Mineral (Mining/Landfill) sites

Classification	Site assessment	Number of Scheduled Annual Visits
Category A	Sites fully in Aftercare or Dormant: if dormant sites become active the visits will increase.	1 chargeable visit
Category B	Sites with simpler planning permissions and/or low levels of site activity.	2 - 4 chargeable visits
Category C	Sites with several complex planning permission/s and/or legal agreements. Development comprising of a number of various activities which warrant individual monitoring. Developments where variations of working have been approved.	6 chargeable visits
Category D	Sites that have not operated in accordance with their planning permission(s); conditions and/or legal obligation(s). Developments that gave rise to one or more substantiated complaints. Developments where enforcement action has been triggered.	8 chargeable visits

9.5 The Waste (England & Wales) Regulations 2011 require that waste management sites are also monitored, though these are not chargeable. Depending upon the permitted operations and any ongoing breaches at a site, they will receive between 1 – 6 scheduled visits each year, although additional visits may be made. See **Table 3 – Scheduling visits to Waste Management sites** below.

Table 3 – Scheduling visits to Waste Management sites

Classification	Site assessment	Number of Scheduled Annual Visits
Category A	Sites with simple planning permissions and/or low levels of site activity.	1 non-chargeable visit
Category B	Sites with complex planning permissions and higher levels of site activity.	2 non-chargeable visits
Category C	Sites with several complex planning permission/s and/or legal agreements. Development comprising of a number of various activities which warrant individual monitoring. Developments where variations of working have been approved.	4 non-chargeable visits
Category D	Sites that have not operated in accordance with their planning permission(s); conditions and/or legal obligation(s). Developments that gave rise to one or more substantiated complaints. Developments where enforcement action has been triggered.	6 non-chargeable visits

Mineral Monitoring: Site Visit Reports

- 9
- 9.6 The CPA compile site visit reports in respect of the monitoring undertaken for all chargeable visits, a copy of which is provided to the site operator. These reports are considered to be public documents and available for inspection by any interested party. However, whilst third party written requests for reports will be considered (and may be provided in certain cases), private or commercially sensitive information will first be redacted.
- 9.7 The monitoring the CPA carries out is not intended to duplicate the monitoring carried out by other authorities (*e.g. Environment Agency*).
- 9.8 The CPA's monitoring is focused on operators undertaking operational development to check compliance with the conditions specified in planning permission(s) issued by the CPA which are subsequently monitored with breaches addressed. Non-compliance with conditions or breaches of planning permission will be addressed and regularisation sought, either through cessation, encouraging the submission of retrospective planning applications or through the taking of appropriate enforcement action where expedient, proportionate and necessary (see Page 20).
- 9.9 At the time of undertaking a monitoring visit, should officers identify a possible breach in relation to other regulatory authorities remit, the CPA aim notify that authority of the suspected contravention as soon as practicably possible.
- 9.10 The Annual Monitoring Report (*AMR*) provides a brief summary of monitoring & enforcement performance and is available [online](#).

Waste Management Monitoring: Site Visit Reports

- 9.11 The CPA also compile site visit reports in respect of the monitoring undertaken for non-chargeable visits to waste sites, copies of which are not provided to the site operator, as they are only for CPA use. These reports are considered to be public documents and are available for inspection.

10. Further consideration of enforcement action

European Convention on Human Rights - The Human Rights Act (1998)

10.1 It is unlawful for a public authority to act in a way that is incompatible with a Convention right. The CPA will consider whether proposed enforcement action might breach any human rights. The relevant articles to consider are:

a) Article 1 of Protocol 1 - Provides that a person is entitled to the peaceful enjoyment of his possessions and that no-one shall be deprived of their possessions except in the public interest. Possessions will include material possessions, such as property, and also planning permissions and possibly other rights.

b) Article 6 - Right to a fair trial.

c) Article 8 - Right to respect for a private and family life, home and correspondence.

d) Article 14 - Prohibition of discrimination.

Pursuing a prosecution

10.2 A decision to prosecute must consider:

i) Sufficiency of evidence - is there sufficient, admissible and reliable evidence that there is a realistic prospect of conviction; and

ii) Public interest – is it in the public interest to prosecute?

10.3 Whilst preparing to prosecute, subsequent compliance with a notice would make it possible that a prosecution would be withdrawn.

Working with the Regulation of Investigatory Powers Act 2000 (RIPA)

10.4 Once a BCN, EN, SN, TSN, County Court Injunction (CCI) or High Court Injunction (HCI) becomes effective, failure to comply with the requirements of the notice by the designated dates becomes a criminal matter. Unannounced site visits may be undertaken on or after the due dates to check for compliance or if new breaches are suspected. Covert surveillance or investigations is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA).

10.5 CPA Officers will, where justified, openly undertake surveillance of a site that has an extant existing notice in place in order to seek to obtain evidence of criminal activity.

Potential for use of the Proceeds of Crime Act 2002 (POCA)

- 10.6 Confiscation orders under POCA are orders which criminal courts may take after conviction (whether by guilty plea or after trial), alongside any other penalty imposed for the offence. The purpose of a confiscation order is to seek to remove financial benefit which a defendant has made from their criminal offending.

POCA may be used in any criminal offence where financial gain has occurred, although it does not have to be used. The Home Office Asset Recovery Investigation Scheme (ARIS) applies to sums ordered to be paid under confiscation orders.

Appendix 1 – Legislation, guidance and policy documents

A. Guidance is set out within:

[The Town and Country Planning Act 1990 \(TCPA\)](#)

[The Town and Country Planning \(General Permitted Development\) Order 2015 \(as amended\)](#)

[Enforcement of Planning Control - RTPI Practice Advice Note 6 – \(revised 2007\)](#)

[The Human Rights Act 1998](#)

[Equality Act 2020 \(legislation.gov.uk\)](#)

[Enforcement Concordat - March 1998 \(Endorsed by SCC in April 1998\)](#)

[Enforcement Concordat: Good Practise Guide for England and Wales – June 2003](#)

[Proceeds of Crime Act 2002](#)

[The Town and Country Planning \(Prescription of County Matters\)\(England\) Regulations 2003](#)

[Fees for Monitoring of Mining and Landfill Sites in England – April 2006](#)

[The Waste \(England and Wales\) Regulations 2011 \(legislation.gov.uk\)](#)

[Procedural Guide: Enforcement notice appeals - England – 13 October 2021](#)

[The National Planning Policy Framework 2021 \(NPPF\)](#)

[The Town and Country Planning \(Fees for Applications, Deemed Applications, Requests and Site Visits\) \(England\) \(Amendment\) Regulations 2017 \(legislation.gov.uk\)](#)

[Planning Practice Guidance issued 24th June 2021 \(PPG\)](#)

[Department for Business Innovation and Skills: Regulators' Code - April 2014](#)

[The Crown Prosecution - The Code for Crown Prosecutors October 2018](#)

[RTPI | Planning Enforcement Handbook for England](#)

B. Local Development Plan Policy is set out within Surrey County Council's Development Plan, comprising:

[Surrey Minerals Plan Core Strategy DPD–Adopted 19 July 2011.](#)

[Surrey Minerals Plan Primary Aggregates DPD–Adopted 19 July 2011](#)

[Surrey Minerals Plan Aggregates Recycling Joint DPD – Adopted 13 February 2013](#)

[Surrey Waste Plan – Adopted 8 December 2020](#)

Surrey's Local Planning Authorities comprise the following Borough and District Councils:

[Elmbridge BC](#)

[Epsom & Ewell BC](#)

[Guildford BC](#)

[Mole Valley DC](#)

[Reigate & Banstead B C](#)

[Runnymede BC](#)

[Spelthorne BC](#)

[Surrey Heath BC](#)

[Tandridge DC](#)

[Waverley DC](#)

[Woking BC](#)

Appendix 2

County Council Development (Regulation 3) Monitoring and Enforcement Protocol

Monitoring Compliance and Remedial Action

Under Regulation 3 (Reg. 3) of the Town and Country Planning Act, the County Council is both applicant and determining planning authority in respect of its own development. The County Council seeks to act as an exemplar in carrying out its own development and adhering to the requirements and implementation of National and Local Planning Policy. Great emphasis is given to the implementation of planning permissions in an environmentally acceptable, sustainable, and safe manner.

The County Planning Authority (CPA) will proactively monitor the implementation of planning permissions and approvals for Reg. 3 development. The monitoring visits made by Officers may be unannounced or by appointment. The CPA expects a very high standard of compliance and performance from those in implementing Reg. 3 planning permissions, whether acting as the commissioning body or contractor in the process. County staff and contractors working with or for the County Council should enable site inspections to take place and assist in providing any necessary information to monitor progress and compliance.

Monitoring by Officers

Planning Officers will monitor the implementation of Reg. 3 planning permissions.

Planning Officers will liaise with the commissioning body and discuss and offer advice on the program for implementation of an extant permission. Planning Officers will expect the commissioning body and/or project managers (the applicant) to commit to the timely implementation of all planning permissions in accordance with the required timescales including the submission of detailed schemes as required by planning condition.

In the case of pre commencement conditions, it is essential that ample time and resources are allowed by the commissioning body in order to enable the submitted scheme to be determined and approved before works commence. A failure to obtain prior approval for works the subject of planning conditions is a breach of planning control and will be recorded as such by Planning Officers.

Planning Officers will maintain a schedule of planning permissions granted for Reg. 3 and this information will be shared with the applicant.

Agreeing remedial action under delegated powers

Planning Officers have delegated powers to negotiate and agree an appropriate level of planning control and necessary remedial action where there has been a breach involving Reg. 3 development. Planning Officers will seek to be pre-emptive in

controlling Reg. 3 development and so minimize or avoid the harm and risks associated with unauthorised development.

Where an actual or prospective breach of planning control is identified for Reg. 3 development, Planning Officers will seek to resolve matters promptly through discussion with the applicant and, where reasonable and appropriate, shall set out the requirements for necessary remedial works and actions in a written notice. Requirements shall include setting a timescale for a written response from the applicant, which reflects the severity of the breach of planning control and the consequent urgency to secure resolution.

The applicant should indicate acceptance of the specified remedial action, or action to avoid a breach occurring, in accordance with the timescale set out in the written notice issued by Planning Officers.

Where urgent action is required to avoid significant harm and the applicant has not resolved the breach, Planning Officers will refer the matter directly to a Sub Committee of the Planning and Regulatory Committee as described below. The applicant will simultaneously be informed of this course of action and reasons why.

Referral for decision

In the event that the applicant cannot agree to deliver part or all of the specified remedial works or actions within an acceptable timescale and the development is giving rise to planning harm or a poor standard of service, then the case will be referred to a nominated Panel of Members sitting as a Sub Committee to the Planning and Regulatory Committee (Planning Regulation 3 Protocol Sub Committee – P3S) for resolution and, where necessary, referral with a recommendation to the Chief Executive for a final decision. The Panel shall be formed of five Members consisting of the Chair or Vice Chair of the Planning and Regulatory Committee and at least one Member of each of the main political groupings, or their nominated substitutes. As soon as is practical, the case and resolution shall be reported to the Planning and Regulatory Committee for information. The Local Member will be kept informed at all stages.

Planning Officers will prepare a report which sets out the circumstances and planning merits and includes a recommendation for action to resolve the breach of planning control. The applicant will prepare and submit a response. The Panel of Members may resolve whether to accept the recommendation in full or in part, or to amend, or reject the proposals. If the Panel rejects the proposals, a recommendation shall be referred to the Chief Executive as final arbiter and decision maker.

A case should normally be reported to the Panel within one month of the response of the applicant, however the Panel should be willing to sit at short notice where the Chair or Vice Chair considers that there is a matter to be dealt with urgently. The Local Member shall be invited to attend the meeting.

Enforcement Action

Formal enforcement action against Reg. 3 development can only be taken by the Borough or District Council in which area the development is situated and may be the subject of referral/request by the County Council or by a third party.

Appendix 3 - Glossary

Breach of planning control	Where a breach of planning control has occurred in the absence of planning permission or where the conditions of a planning permission have not been complied with.
Development	Defined by section 55 (1) of the Town and Country Planning Act 1990 as meaning the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
Development Plan	The relevant planning policy documents, to be considered for an area. In Surrey, this will include documents produced by both the County and district and borough councils.
Metropolitan Green Belt (MGB)	Designated land in Development Plans which is protected from development in order to prevent urban sprawl and maintain open countryside
Area of Outstanding Natural Beauty (AONB)	This national designation was established to maintain an area of precious landscape with distinctive character and natural beauty for the benefit of the nation.
Area of Great Landscape Value (AGLV)	This designation was provided to maintain a landscapes distinctive character or quality by restricting development.
Permitted Development	Development which does not required an express grant of planning permission – see Town and Country Planning (General Permitted Development) Order 2015 or the Use Classes Order 1987.
Ramsar Sites	Wetlands of international importance designated under the Ramsar Convention It provides for the conservation and good use of wetlands and the convention was ratified by the UK Government in 1976 when it also designated its first Ramsar sites.
Scheduled ancient monuments	Nationally important archaeological sites or historic buildings.
Section 106 agreement	Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally binding agreement (planning obligation) with a developer of land to secure appropriate mitigation for the development
Sites of Special Scientific Interest (SSSI)	Defined under the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) as an area of special interest by reason of any of its flora, fauna, or geological features.

Special Areas of Conservation (SAC)

These are protected sites designated under the European Community (EC) Habitats Directive. The listed habitat types and species are those considered to be most in need of conservation at a European level (excluding birds).

Special Protection Areas (SPA)

These are protected sites for rare and vulnerable birds and for regularly occurring migratory species as classified in accordance with Article 4 of the EC Birds Directive.

Flood Plain

Use the following link for up to date information.

[Flood map for planning - GOV.UK \(flood-map-for-planning.service.gov.uk\)](https://www.gov.uk/guidance/flood-map-for-planning)

Material planning considerations

A material consideration is a matter that should be taken into account in making a planning decision, for example traffic, noise, design and nature conservation. Non-material planning considerations include loss of property value, boundary disputes and matters controlled by non-planning legislation.

Lawful development

A local planning authority can grant a certificate confirming that: an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is (or would be) lawful for planning purposes.



Appendix 4 – Contact details

Phone Number:

SCC Contact Centre: 03456 – 009009

Email:

mwcd@surreycc.gov.uk

Post:

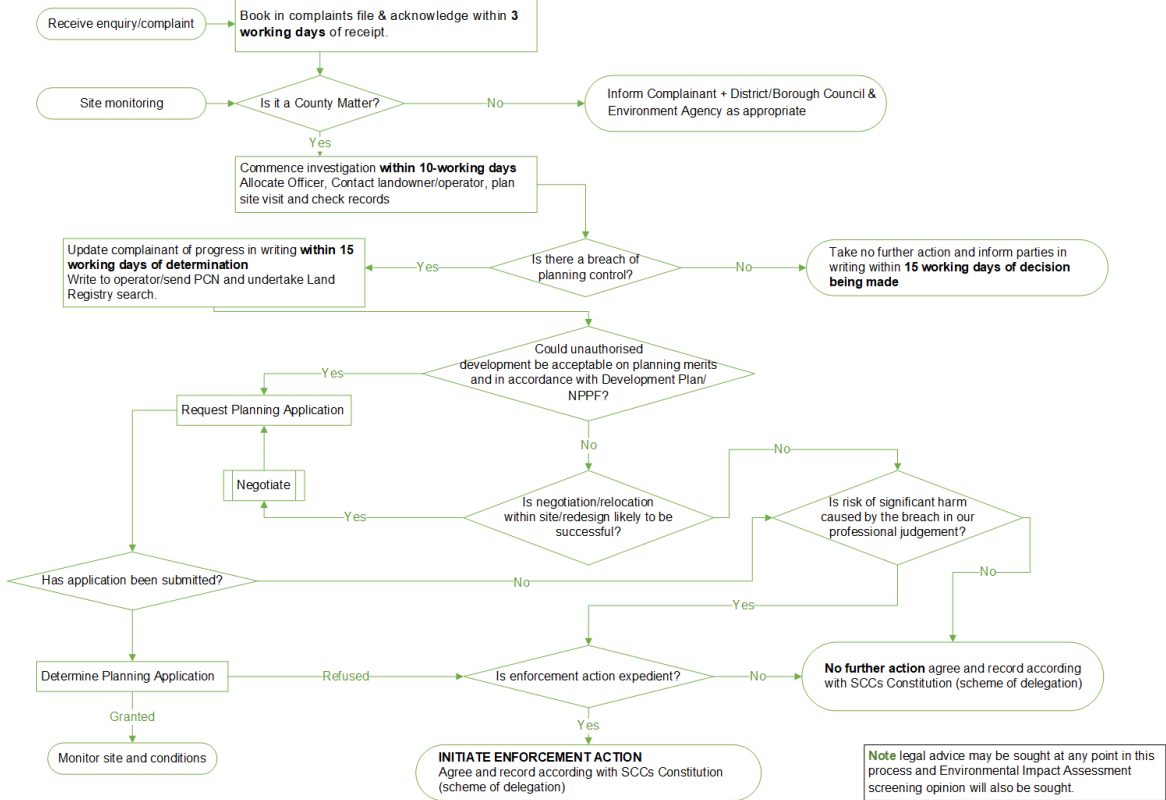
Planning Enforcement & Monitoring, Floor 3, Quadrant Court, 35 Guildford Road,
Woking, Surrey, GU22 7QQ

For general planning information please see the Surrey County Council website:

[Planning - Surrey County Council \(surreycc.gov.uk\)](http://surreycc.gov.uk)

Appendix 5 – Fig 1

Figure 1 - Processing of enquiries, complaints and site monitoring findings



9

This page is intentionally left blank