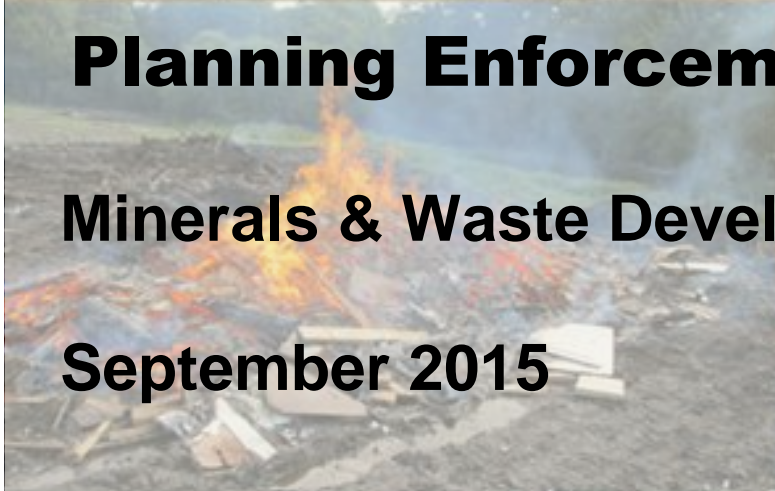




Planning Enforcement Protocol

Minerals & Waste Development

September 2015





SURREY
COUNTY COUNCIL

ENVIRONMENT & INFRASTRUCTURE

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

SEPTEMBER 2015

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1. Purpose of this document

Guidance

- 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.

Openness

- 1.3 Officers will advise a complainant and those involved in carrying out unauthorised development of the protocol that applies and will keep as much information as is practically possible in the public domain, whilst protecting the confidentiality of a complainant and any sensitive business information. 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 twice a year

Information

- 1.4 This document is provided as information only. 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 or any subordinate legislation made under it or statutory guidance issued in relation to it.
- 1.5 The CPA accepts no responsibility for any errors, omissions or misleading statements on these pages, or any source of information to which these pages refer. In particular, it must be noted that, 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.

2. Introduction to the County planning function

Responsibility

- 9
- 2.1 Surrey County Council as the CPA has responsibility for discharging the development control 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 only deals with minerals and waste matters, the monitoring and enforcement of SCC's own Regulation 3 development is not addressed within this document, but will be covered within a separate procedure note.
- 2.3 The CPA has legal powers to deal with 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 District and Borough matters in this way
 - Housing and commercial development
 - Untidy lands

3. The monitoring and enforcement function

Monitoring

- 3.1 For all dormant and operational minerals sites and operational waste sites with planning permissions granted by the CPA, officers undertake routine monitoring to ensure compliance with conditions imposed as part of such permissions and to ensure that any unauthorised development is identified, and regularised as appropriate. The CPA has been proactive in monitoring such sites for over 20 years and this has now become mandatory through the requirements of 'The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2012', the 'Waste Framework Directive (2008/98EC)' and 'The Waste (England and Wales) Regulations 2012'.

Enforcement

- 3.2 Where there are breaches of planning control from unauthorised mineral or waste development or from non-compliance with planning conditions, the CPA has discretion to take enforcement action if expedient.
- 3.3 The legislation governing such planning enforcement is principally provided by the following:
- Town and Country Planning Act 1990
 - Planning and Compensation Act 1991
 - Town and County Planning Act (General Permitted Development Order) 2015
 - Town and Country Planning (Enforcement Notice and Appeals) Regulations 2002
 - Planning and Compulsory Purchase Act 2004
 - Town and Country Planning (Fees for applications and deemed applications) Regulations 2012
 - Department for Business Innovation and Skills Regulators' Code April 2014
 - The Crown Prosecution - The Code for Crown prosecutors January 2013
- 3.4 In carrying out the CPA's enforcement function, procedures and decisions will have regard to legislation guidance and policy, details of which can be found in Appendix 1.
- 3.5 The Enforcement Protocol complies with the National Planning Policy Framework (NPPF), paragraph 207 which states:
- 'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the

implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

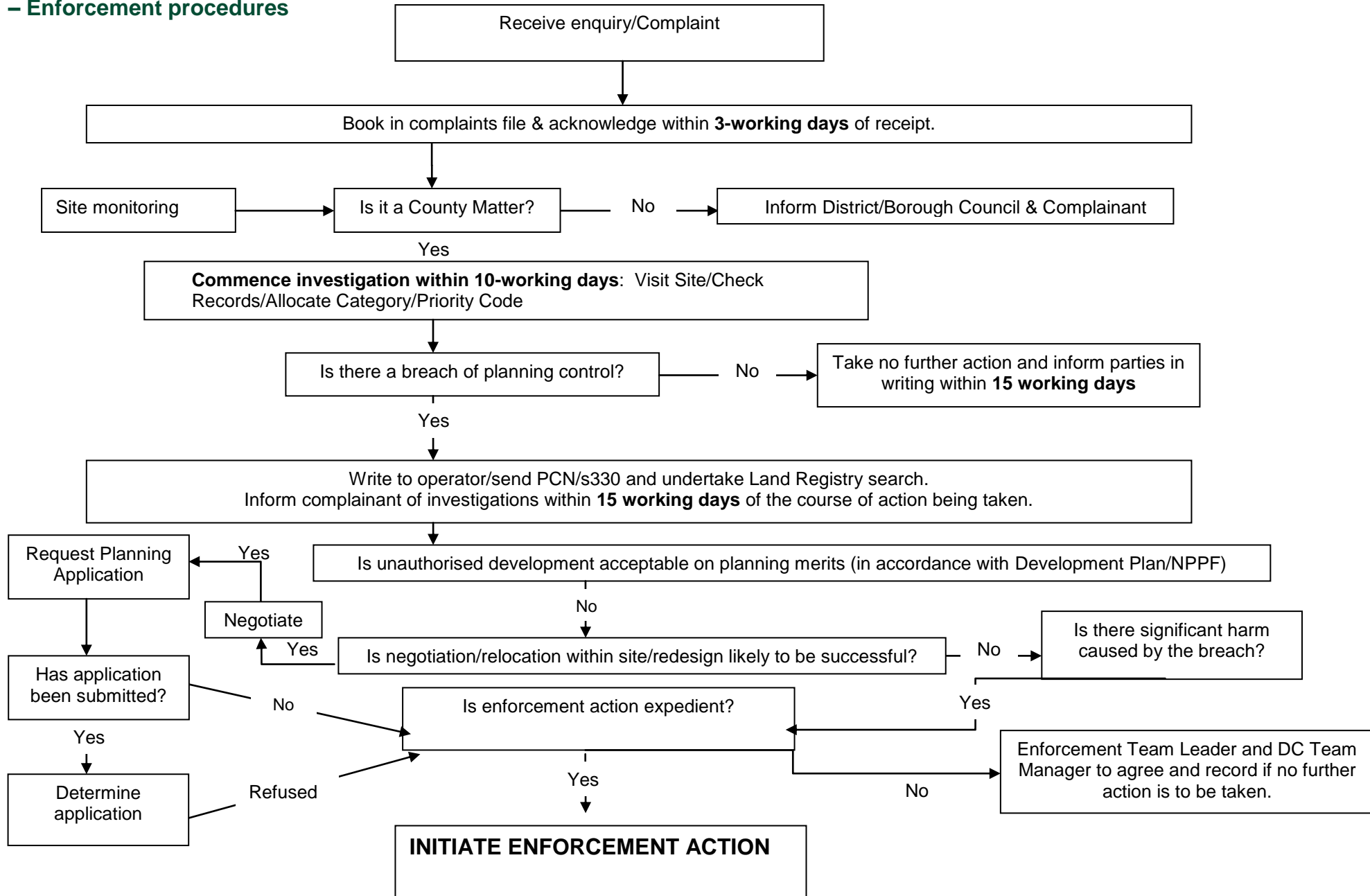
- 3.6 This Enforcement Protocol sets out the CPAs approach to achieving planning compliance at mineral and waste management sites within Surrey and consists of two broad elements. The first relates to the proactive monitoring of authorised mineral and waste management sites and the second sets out how enquiries/complaints alleging that a breach of planning control has occurred will be investigated and remedied where appropriate.

9

Investigating sites of unauthorised development

- 3.7 In addition to the monitoring of sites with planning permission, sites known to have unauthorised development are added to our schedule.
- 3.8 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. Where such actions fail to achieve the desired effect then formal enforcement action may be taken. This may result in either a negotiated cessation, compliance through the issue of an enforcement notice or potentially the retrospective grant of planning permission, either through a planning application or at appeal.
- 3.9 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.
- 3.10 See Fig. 1 Enforcement Procedures for the enforcement decision making process.

Fig. 1: – Enforcement procedures



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Note: legal advice may be sought at any point in this process and EIA screening will also be sought.

4. Dealing with enquiries and complaints

How to raise a complaint or enquiry

- 9
- 4.1 People should contact the CPA when they are concerned that mineral or waste development, is a cause of concern or is considered a breach of planning control. These will be investigated on a priority basis dependent upon the perception of risk (see Table 1 Prioritising Complaints). The CPA will seek co-operation to resolve problems and use formal enforcement powers as a last resort.
- 4.2 Wherever possible, email is the best way of communicating with the Monitoring and Enforcement Team 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, plus full details of the issue.
- 4.3 Officers are contactable by phone, email or post and contact details are provided on the [SCC website](#) and at the end of this document.

Recording and acknowledging complaints

- 4.4 Upon receipt of a complaint, the CPA will make an initial risk assessment to classify the complaint, see Table 1.
- 4.5 Details of the complaint will be recorded and allocated to a Monitoring Officer (in the case of authorised sites) or to an Enforcement Officer (where the site is unauthorised) within 2 working days of receipt of the complaint.
- 4.6 The appropriate officer will contact the complainant (*by way of writing or telephone*) to acknowledge receipt of their complaint(s) within 3 working days of receiving the complaint.

| 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. | A failure to install or maintain wheel cleaning equipment |
| 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 |

Table 1 – Prioritising complaints

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 1998, though this may potentially result in such information having to be disclosed at court.

Equality & Diversity

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.

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 district and boroughs 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 promptly advised of our findings. The operator/land owner/occupier will be advised of planning breaches in writing and other authorities will receive copies of such communications

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.

9

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 powers the authority has to take formal action.
- 4.15 A technical breach of planning control will be investigated and assessed as to whether it warrants enforcement action. The CPA will 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 The rights of appeal of the operator/land owner/occupier against any formal notice will be clearly explained.
- 4.17 Before any formal enforcement action is undertaken, operators/land owners/occupiers will be invited to discuss the issues with the officer, unless immediate action against the breach of planning control is necessary.
- 4.18 Any threat of formal action will be expedited where there is inadequate evidence of steps being taken to resolve the problems.

Dissatisfaction with the service

- 4.19 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 Team Manager expressing their concerns and/or requesting a review of the investigation.
- 4.20 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.

- 4.21 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 Ombudsman. The Local Government Ombudsman 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
- iii) The carrying out of development where no planning permission exists, and it is unlikely to gain planning permission.

5.2 Where a breach is suspected, any evidence test must be based upon the balance of probability. A variety of planning enforcement tools are provided by The Town & Country Planning Act 1990 (as amended), but not all are available to the CPA when dealing with breaches of planning control involving mineral and waste planning issues. It is a criminal offence not to comply with an existing enforcement notice.

5.3 A prosecution may be pursued where sufficient evidence of a breach has been obtained and where it is in the public interest.

6. Approach to enforcement

Negotiation

- 6.1 The CPA, so far as possible, will deal with a breach of planning control informally and Officers will be helpful and will seek to rectify the breach through negotiation and, if appropriate, through the invitation of submission of a retrospective planning application or a Certificate of Lawful Existing Use or Development (CLEUD).
- 6.2 The CPA will act promptly to effectively address breaches of planning control unless it is clear that the negotiations will 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 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 waste materials are being imported and deposited and stored or treated on the land, be they inert or non-inert waste, the unauthorised development will 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 is likely to 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, the service of an Enforcement Notice will not take place without further discussion and due warning.

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.
- 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 Enforcement Team Leader and the Planning Development Team Manager.

Deciding whether to take enforcement action: a last resort

- 7.3 Officers will advise any complainant and anyone carrying out unauthorised development as to the protocol that applies. When complaints are acknowledged, a link to this protocol will be included within the written response. Officers will make hard copies available if requested to developers on site and will include the link within subsequent written communications.
- 7.4 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

- 7.5 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.
- 7.6 Designated Enforcement Officers, Planning Officers and Legal Officers have delegated authority to take enforcement action, or conversely not to initiate 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 6-monthly reports. Borough and District as the Local Planning Authorities (LPAs) deal with all other forms of development, but may deal with waste matters where this has been agreed 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 obtain 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 Requisition Notice (s 330)

The CPA may serve a notice on the occupier of any premises and any persons receiving rent in respect of any premises, requiring information about those with an interest in the land and the use of the land. This notice may be the precursor to the issue of a formal enforcement notice; those served have 21 days to respond. Failure to comply with a s330 Requisition Notice is a criminal offence, triable at the Magistrates court or the Crown Court.

8.3 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

8.4 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.

8.5 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*). Failure to comply with a TSN is a criminal offence.

8.6 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 but if not appealed failure to comply with the requirement of an EN is a criminal offence.

The lodging of an appeal effectively suspends the EN until the appeal is finally determined or the notice is withdrawn.

Failure to comply with an EN upheld at appeal is a criminal offence. The EN is a local land charge and runs with the land (not the land owner) and remains in place on the land.

8.7 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 and failure to comply is a criminal offence.

8.8 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. If successfully prosecuted, the maximum fine that may be imposed by the Magistrates is £20,000, whilst a Crown Court may impose an unlimited fine or imprisonment in relation to an EN.

8.9 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. 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. The decision to make an injunction order is at the discretion of the judge.

Failure to comply with a court order or an undertaking given to the court is a contempt of court, punishable by an unlimited fine and up to two years imprisonment.

9

8.10 Direct Action (s 178)

In order to secure compliance with an EN, the Town and Country Planning Act 1990 and the extended provisions in the Planning and Compensation Act 1991 empowers the CPA to take direct action in default of the owner/occupier of the land. Where the steps required by an EN are not undertaken within the period for compliance, the CPA may enter the land and take the steps and recover from the person who is the owner of the land any expenses reasonably incurred by the CPA in doing so. The agreement of the Planning and Regulatory Committee would be sought due to the costs that would be incurred by the CPA. The CPA may also choose to register a charge for a sum equal to the estimated cost of the work, on the land instead.

9. Scheduling of minerals and waste monitoring

Legislation

- 9.1 A schedule of visits to mineral and waste sites is prepared annually. The number of chargeable visits to mineral sites is prepared in accord with 'The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2012'. Scheduled visits to waste sites with planning permission are based on site operations and issues that have arisen over the previous year.
- 9.2 The frequency of monitoring of mineral sites, see Table 2 Scheduling mineral site visits, is 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 – 6 visits.
 - iv) Category D – 8 visits.
- 9.3 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.

9

| Classification | Monitoring of Authorised Sites | Scheduled Annual Visits |
|-----------------------|--|--------------------------------|
| Category A | Sites fully in Aftercare or Dormant: if dormant sites become active the visits will increase. | 1 visit |
| Category B | Sites with simpler planning permissions and/or low levels of site activity. | 2 - 4 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 visits |
| Category D | Sites that have not been operating in accordance with their respective planning permission(s); conditions and/or legal obligation(s). Developments that give rise to one or more substantiated complaints. Developments where enforcement action has been triggered. | 8 visits |

Table 2 – Scheduling mineral site visits

9.4 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

- 9.5 The monitoring the CPA carries out is not intended to duplicate the monitoring carried out by other authorities (*e.g. Environment Agency*).
- 9.6 The CPA's monitoring is focused on operator compliance with the activities and uses specified in relevant planning permission(s).
- 9.7 At the time of undertaking a monitoring visit, should officers identify a possible breach in relation to other regulatory authorities remit, the CPA will notify that authority of the suspected contravention as soon as practicably possible.
- 9.8 The Annual Monitoring Report (*AMR*) provides a brief summary of monitoring & enforcement performance and is available [online](#).

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 a private and family life.
- 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 a criminal offence has been committed.
- ii) Public interest – is it in the public interest to prosecute?
- iii) The presence, or lack of financial benefit - See Proceeds of Crime Act 2002 (POCA).

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

Working with the Regulatory Investigatory Procedures 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), but the ability of the CPA to undertake covert surveillance or investigations is regulated by the Regulatory Investigatory Procedures Act (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)

- 10.8 Following a successful criminal prosecution for non-compliance with an enforcement notice, the Proceeds of Crime Act (POCA) allows for confiscation orders to be made by the Crown Court for the recovery of the gross receipts of an illegal business as it arises from a criminal activity.

Appendix 1 – Legislation, guidance and policy documents

A. National Policy 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 – 1996](#)

[The Human Rights Act 1998](#)

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

[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](#)

[Procedural Guidance - Enforcement Appeals and Determination of Appeal Procedure PINS July 2015](#)

[The National Planning Policy Framework 2012 \(NPPF\)](#)

[Town & Country Planning \(Fees for Applications, Deemed Applications, Requests and Site Visits \(England\) Regulations 2012](#)

[Planning Practice Guidance issued 6th March 2014 \(PPG\)](#)

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

[The Crown Prosecution - The Code for Crown Prosecutors January 2013](#)

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 Waste Plan – Adopted 6 May 2008](#)

http://www.surreycc.gov.uk/_data/assets/pdf_file/0019/19081/FINAL-ADOPTED-AGGS-JOINT-DPD-2013.pdf

Our 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 - Glossary

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| 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). |

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| 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 | See the Environment Agency's website via the following link for up to date information. |
| 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 3 – Contact details

Phone Numbers:

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|--|----------------|
| Ian Gray - Planning Enforcement Team Leader: | 0208 541 9423 |
| Paul Warner - Senior Enforcement Officer: | 0208 541 9394 |
| Karen Jackson - Monitoring Officer: | 0208 541 9923 |
| James Nolan - Monitoring Officer: | 0208 541 9442 |
| SCC Contact Centre: | 03456 - 009009 |

Email:

mwcd@surreycc.gov.uk

Post:

Planning Enforcement & Monitoring, Room 391, Surrey County Council, County Hall, Penrhyn Road, Kingston upon Thames, KT1 2DY.

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

<http://new.surreycc.gov.uk/environment-housing-and-planning/planning>