

AGENDA ITEM No. 7

John Vickery

From: Jeakins Deborah <Deborah.Jeakins@cambridgeshire.gov.uk>
Sent: 24 October 2016 09:24
To: Jeakins Deborah
Subject: Consultation on the Enforcement Plan for Planning, Minerals and Waste
Attachments: Enforcement Plan revision DRAFT 2016.pdf

I am writing to invite your views on an update to the Enforcement Plan for Planning, Minerals and Waste Development in Cambridgeshire, a copy of which is attached.

The Plan explains our approach to achieving planning compliance at mineral and waste management sites within Cambridgeshire, sets out what formal action can be taken and explains how decisions will be made.

The consultation period will run from 24 October 2016 and end on 6 December 2016. Please send your response to:

Cambridgeshire County Council
County Development, Minerals and Waste Planning
Box No. CC1213
Shire Hall
Castle Hill
Cambridge
CB3 0AP

Alternatively you may e-mail the response to planningdc@cambridgeshire.gov.uk.

All responses should be received by 6 December 2016.

We will summarise all responses on our website. The summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.

All responses to the consultation will be considered and will inform any changes to the plan. The amended plan will be presented to the Planning Committee for consideration and approval prior to implementation. Once the updated plan has been approved we will place a copy on our website and send a link to all interested parties.

Thank you for your help in this matter. If you have any queries, please contact Deborah Jeakins on 01223 715544.

Deborah Jeakins
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County Planning, Minerals and Waste
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CAMBRIDGESHIRE COUNTY COUNCIL

County Planning, Minerals and Waste Development

Enforcement Plan

DRAFT

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1. INTRODUCTION AND PURPOSE

- 1.1 Cambridgeshire County Council (the Council) is committed to delivering an effective and proportionate planning control service for 'County matters'.

'County matters' are defined in Schedule 1 of The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003, as the monitoring and control of mineral and waste management sites.

The Council also determines applications for its own development but is not the Local Planning Authority responsible for any other planning matters.

- 1.2 The purpose of this Enforcement Plan (the Plan) is to explain our approach to achieving planning compliance at mineral and waste management sites within Cambridgeshire. The Plan also sets out what action can be taken and how decisions will be made in respect of pursuing formal action.

- 1.3 The publication of this Plan accords with paragraph 207 of the National Planning Policy Framework (NPPF), 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.

- 1.4 Section 55 of the Town and Country Planning Act 1990 (as amended) defines 'development' as:

'...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.'

- 1.5 A Breach of planning control is defined under section 171A (1) of the Town and Country Planning Act 1990 (as amended) as carrying out development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.

- 1.6 Our approach consists of two broad elements: monitoring and enforcement.

Monitoring refers to the proactive periodic inspection of permitted mineral and waste management sites. Monitoring mineral and waste sites is a statutory duty under section 19 of The Waste (England and Wales) Regulations 2011.

Enforcement refers to how investigations into allegations that a breach of planning control has occurred will be undertaken, and, where appropriate, the steps that the Council may pursue to remedy a breach.

2. GENERAL PRINCIPLES

- 2.1 A key principle of the Council's approach to planning is to support sustainable growth, which takes into account the needs of the environment.
- 2.2 Each set of circumstances is unique and must be considered on its own merits. However, the general principles of good enforcement are contained in the Regulators Code produced by the Department for Business Innovation and Skills in April 2014.
- 2.3 All Council officers with responsibility for planning matters will have regard to the Enforcement Plan, the Regulators Code and relevant legislation and guidance. The Council will only take action which is proportionate to the planning harm and to the seriousness of any breach of planning control. Where a breach of planning control has been confirmed, officers will usually, in the first instance, try to secure compliance by using an advisory approach. However, in certain circumstances, this will not be appropriate and further action will be considered necessary to remedy the planning harm being caused.
- 2.4 All officers undertaking enforcement activities will be duly authorised under the Council's scheme of delegation and will be appropriately trained.

3. ENFORCEMENT AND COMPLIANCE OBJECTIVES

- 3.1 The Council's enforcement and monitoring objectives are to ensure that:
- serious or irremediable harm occurring as a result of minerals and waste development is addressed;
 - site operators, landowners and occupiers comply with the planning conditions imposed by the Council; and
 - breaches of planning control are addressed reasonably, appropriately and proportionately.

4. MONITORING VISITS AND FEES

- 4.1 The principal purpose of a monitoring visit is to check compliance with conditions of the relevant planning permission(s) relating to a minerals or waste development. These planning permissions may include complex and technical conditions, which are designed to mitigate the impact of the activity.
- 4.2 The Town and Country Planning (Fees for Applications Deemed Applications Requests and Site Visits) (England) Regulations 2012 enable the Council to charge a fee for monitoring permitted mineral extraction and landfill sites, from the date that the permission is implemented to the end of the aftercare period.
- 4.3 The monitoring fees are set by Government and, at the time of publishing this plan, the following monitoring fees are payable:

- where the whole or a part of the site is active the fee is £331; or
 - if the site is inactive or dormant the fee is £110.
- 4.4 The cost of visiting other types of mineral and waste management sites, such as waste transfer stations, material recycling facilities, energy from waste plants, scrap yards and mineral rail heads (including the associated industrial development), is borne by the Council.
- 4.5 The monitoring visits will serve to:
- allow the Council to gain an overall impression of the day-to-day operation of the site, chart progress to date, and identify and address potential problems before they arise;
 - encourage good operational practice rather than punish bad practice;
 - act as a means of regular liaison with operators; and
 - provide information to support any site liaison forums.

5. ASSESSMENT OF COMPLAINTS

- 5.1 The Council will investigate complaints alleging a breach of planning control within Cambridgeshire, which are 'County matters'.
- 5.2 Anonymous complaints or complaints that appear to be vexatious in nature will not normally be investigated, unless they allege a serious breach of planning control that is capable of being verified by a Council officer.
- 5.3 All complaints are assessed and prioritised using the categories set out below, the categories aim to determine the potential severity of the issues raised and timescales for the investigation:

Category 1 – High / Severe risk of irreversible harm occurring Visit site within 3 working days

- 5.4 County matters which appear to be causing immediate and potentially irreversible harm either to:
- the local amenity;
 - designated sites under the Ramsar¹ international wetlands convention, special protection areas, special areas of conservation, sites of special scientific interest, scheduled monuments, habitats of statutorily protected species, local nature reserves or county wildlife sites;
 - human health and/or safety (including road safety);
 - potable ground and/or surface water supplies; or
 - archaeological resources.

Category 2 – Significant /Medium risk of harm occurring Visit site within 5 working days

¹ Wetlands of international importance designated under the Ramsar Convention.

- 5.5 County matters which appear to be impacting on the designated sites listed in Category 1 or have the potential to cause significant harm either to:
- the local amenity;
 - health and/or safety (including road safety);
 - ground and/or surface water; or
 - archaeological resources.

**Category 3 – Low Risk of harm occurring
Visit site within 10 working days**

- 5.6 County matters which do not appear to be causing significant harm or have the potential to cause significant harm to the designated sites listed in Category 1 or to:
- the local amenity;
 - human health and/or safety (including road safety);
 - ground and/or surface water; or
 - archaeological resources.

6. INVESTIGATING COMPLAINTS

- 6.1 Complaints will be recorded and acknowledged within 5 working days of being received. Complainants will be updated at key stages during the investigation. Complainant's details will be kept confidential.
- 6.2 Following a desktop investigation into the relevant planning history and constraints relating to the land, officers will usually undertake a site visit to gather more information and evidence relating to the alleged breach.
- 6.3 If a breach of planning control is confirmed, the occupier/landowner will be advised of the details of the breach that has been confirmed and of the steps and timescales required to remedy the breach.
- 6.4 Further site visits and monitoring may be undertaken to ensure the required actions are completed within the specified timescales.

7. LEGAL POWERS TO OBTAIN INFORMATION

- 7.1 The Council may serve the following notices on the owner or occupier of the land to obtain land ownership information and to assess whether a breach of planning control has occurred and the seriousness of any breach:
- A Planning Contravention Notice under Section 171C Town and Country Planning Act 1990 as amended;
 - A notice under Section 330 of the Town and Country Planning Act 1990;
 - A notice under Section 16 Local Government (Miscellaneous Provisions) Act 1976.

- 7.2 There is no right of appeal against notices served to obtain information. Failure to provide a formal written response to a notice within the stated timescale is a criminal offence, which is open to prosecution.

8. WHERE A BREACH IS CONFIRMED

- 8.1 Before considering any possible enforcement action, the investigation will establish whether or not the development is acceptable in principle, and if anything needs to be done to bring it up to a satisfactory standard, or to ensure it complies with the relevant legislation.
- 8.2 If the development is not acceptable in principle, officers will consider what action is appropriate to prevent it continuing and produce a written report to support any recommendations for further action. The report will set out the background and circumstances of the breach, the planning harm caused, any relevant planning policy, the options for taking action and the justification for the recommended course of action.
- 8.3 Although the Council would prefer to negotiate a satisfactory outcome, in some cases formal enforcement action may be considered necessary.

9. WHERE ENFORCEMENT ACTION WILL NOT BE TAKEN

- 9.1 There are certain, limited, circumstances where the County Council will not be able to take formal enforcement action, these include:
- When the Council determines applications for its own development. In these cases, the responsibility for compliance with conditions of permission lies with the relevant Directorate. If the breach is not remedied, the matter will be reported to the Planning Committee.
 - Where the time limit for taking action in respect of an ongoing breach of planning control has expired. Section 171B of the Town and Country Planning Act 1990 (as amended) explains the time scales after which ongoing breaches of planning control become immune from enforcement action.
 - Where the development benefits from permitted development rights under the provisions of the General Permitted Development Order 2015 (as amended), provided that all the relevant restrictions and conditions have been met.
 - Where the County matters have no impact on designated sites or on the local amenity and in cases where technical breaches of planning control cause no material harm or adverse impact on amenity.

10. RETROSPECTIVE APPLICATIONS

- 10.1 Where the unauthorised development could be acceptable in planning terms the Council may ask the occupier/landowner to submit a retrospective

planning application within a specified timescale. The occupier/landowner will be encouraged to seek pre-application advice before submitting a retrospective planning application. Further information on the pre-application advice is available on the Council's web site at:

http://www.cambridgeshire.gov.uk/info/20099/planning_and_development/234/planning/3

- 10.2 The Council will not invite a retrospective planning application if the unauthorised development is contrary to policy, or appears to have the potential to cause harm and it is considered that the harm could not be satisfactorily mitigated by the use of planning conditions.
- 10.3 If a retrospective planning application is invited and submitted, the Council will not usually take formal enforcement action whilst the application is being considered. However, the Council will continue to monitor the implications of the development.
- 10.4 If planning permission is refused and further negotiations fail to remedy the breach, appropriate enforcement action is likely to be pursued.
- 10.5 Where a retrospective planning application is submitted contrary to advice that there is no reasonable prospect of planning permission being granted, enforcement action may be taken, prior to the application being determined.
- 10.6 The Council has the power to decline to determine a retrospective planning application for development, which is already the subject of a pre-existing enforcement notice.

11. WORKING WITH DISTRICT AUTHORITIES AND OTHER AGENCIES

- 11.1 If a breach of planning control is established which is not a 'County matter' nor is permitted under Regulation 3 of the Town and Country Planning General Regulations 1992 (as amended), it will be passed on to the relevant Local Planning Authority. Where unauthorised development on a single planning unit involves both county matters and district planning issues, the Council will liaise with the relevant District Council to establish all the lawful and unlawful elements of the mixed use to ensure that all aspects of development causing planning harm can be addressed.
- 11.2 If enforcement action is considered to be necessary and expedient in these circumstances, the Council will liaise with the relevant District Council before commencing that action. Each case will be decided on its merits and consideration will be given to the land use implications and the respective jurisdiction and powers of County and District Councils.
- 11.3 The Council will also pass relevant information on to other regulators such as the Environment Agency, Internal Drainage Boards, the Environmental Health Department of the local council or the Health and Safety Executive. Where appropriate the Council will work with these regulators to address a breach of planning control.

11.4 Where a breach of planning control relating to county development occurs within Cambridgeshire which impacts on the amenity of residents in an adjacent county, the investigating officer will provide the other Council or authority details of the breach within 5 working days.

12. PRINCIPLES OF ENFORCEMENT ACTION

12.1 Where breaches of planning control are identified, the Council may take enforcement action, where it is satisfied that it is expedient, necessary and in the public interest to do so.

12.2 The Council will take a consistent, clear and fair approach to enforcement, having balanced the need for environmental protection against the desire to encourage sustainable development.

12.3 The Council will only enforce planning control when we have evidence that a breach of planning control has occurred that has, or is likely to, cause demonstrable harm to the public amenity or the environment.

12.4 Where an educational and advisory approach has not succeeded in remedying the harmful effects of unauthorised development, continued negotiations will not be allowed to delay formal enforcement action.

12.5 The enforcement action taken and the required remediation will be proportionate to the nature of the breach.

12.6 The time taken to pursue formal action varies on a case by case basis. The emphasis will be on balancing the urgency to remedy the planning breach with mounting a properly constituted legal response taking into account available resources.

12.7 The Council will co-operate closely with other agencies to ensure a satisfactory solution to breaches of planning control.

12.8 National legislation provides the Council with a number of enforcement tools, which can be used to address breaches of planning control, these include:

- **Section 215 Notice;**
- **Breach of Condition Notice;**
- **Enforcement Notice;**
- **Stop Notice / Temporary Stop Notice;**
- **Prosecution;**
- **Direct Action;**
- **Injunction; and/or**
- **Planning Enforcement Order.**

12.9 Further information on planning enforcement and the various options available to the Council can be found on line at:

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/>

12.10 Where an offence has been committed under planning legislation, the Council may, depending on the circumstances, take action under the Proceeds of Crime Act 2002 to recover a company's or individual's assets that are considered to be the proceeds of crime.

13. ENFORCING PLANNING OBLIGATIONS

13.1 Where a breach of a planning obligation, such as a section 106 routing arrangement or a unilateral undertaking is identified, the Council will initially try to address the breach by working with the relevant site operator.

13.2 If the breach cannot be resolved by negotiation and co-operation the Council will, where necessary, take legal advice on enforcing the relevant clause of the planning obligation.

14. MAKING A COMPLAINT

14.1 If you wish to make an enquiry about the Plan or raise a complaint about the Enforcement Service you can:

- contact the officer dealing with your case directly;
- complete the [on-line complaint form](#);
- telephone us on 0345 045 5200 (charged at local rate);
- use Minicom on 01480 376 743;
- e-mail feedback@Cambridgeshire.gov.uk;
- contact your County Councillor; or
- write to:

Customer Feedback
Cambridgeshire Direct
PO Box 144
St Ives
Cambridgeshire PE27 9AU

15. PLAN REVIEW

15.1 This Enforcement Plan will be reviewed every three years and published on the Council website at:

<http://www.cambridgeshire.gov.uk/>

15.2 The date of the next plan review will be 2019.