

The enforcement and monitoring of planning control Good Practice Guide



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Introduction

1. Introduction

The aim of this document is to set out the County Planning Authority's (CPA) objectives for the monitoring and enforcement of planning control under the Town and Country Planning Acts. It sets out how we will respond to individual complaints about breaches of planning control, our process for investigating and recording complaints and the timescales involved. It also provides general guidance on the factors which Somerset County Council will consider when deciding whether to take enforcement action or not. Each case will be considered on its own merits against this document, the Development Plan and other relevant guidance before a decision is reached on the most appropriate course of action.

The guide also provides details of how and why Somerset County Council monitors sites where planning permission has been granted.



Part One: Enforcement

2. Planning responsibilities

In planning terms, the CPA is responsible for the control of mineral and waste development and County Council development (schools, highways/road schemes, etc) in the county of Somerset. This includes determining planning applications, enforcement and site monitoring. Planning responsibility for all other types of development (and any related enforcement) falls to the relevant District Council.

The CPA will exercise its powers of enforcement in accordance with the objectives set out in this document.

Objective 1 The County Planning Authority will use its powers to enforce planning control where it is considered expedient. When deciding whether to take formal enforcement action the County Planning Authority will give consideration to the policies set out in the development plan, other relevant planning documents, environmental concerns and the impact on public amenity.

3. Breach of planning control

A breach of planning control can be described as:

1. Carrying out development without planning permission; or
2. Failure to comply with any condition or limitation imposed on a planning permission.



Part One: Enforcement

The Town and Country Planning (General Permitted Development) Order 1995 (as amended) excludes many minor operations and some changes of use from the need to obtain planning permission. These minor forms of development are known as “permitted development”, and if an operation has these rights planning permission is not required. However, in most cases conditions are attached to these permitted development rights. Failure to comply with these conditions is also breach of planning control.

4. Enforcement action

Issuing an enforcement notice or the service of a breach of condition notice constitutes taking enforcement action. Enforcement action must be taken within a certain time of the breach of planning control occurring, either within four or ten years:-

The Four year rule

Enforcement action in respect of operational development (e.g. the carrying out of unauthorised building, engineering, mining or other operations) can only be taken within four years.

The Ten year rule

All other breaches of planning control (e.g. failing to comply with conditions or limitations attached to a planning permission or material change of use (other than conversion to a single dwellinghouse where the four year rule would apply and which would be a District Council responsibility)) can only be enforced against within ten years of the beginning of the breach.

The CPA has primary responsibility for taking any enforcement action (within its administrative area and planning remit) considered necessary to protect the public interest. Enforcement action should be commensurate with the breach of planning control it relates to, and an assessment will be

made about the benefits/expediency of taking action. It is usually inappropriate to take formal enforcement action against a technical or trivial breach of control that causes no harm to the amenity of the area.

The Council’s Constitution sets out that the County Planning Authority functions are administered by the Regulation Committee. Like many functions the Scheme of Delegation does not include explicit reference to enforcement action however the Directorate’s Supplementary Guide on the Scheme of Delegation, signed by the Corporate Director, provides delegated authority to the Head of Service, in consultation with the Cabinet Member and Local Member, to take appropriate action. Controversial or significant enforcement issues may be reported to the Regulation Committee, along with all those linked to a decision of that Committee.

5. Enforcement powers

The powers available to the CPA to enforce against breaches of planning control are as follows:

(a) For information gathering

Planning Contravention Notice (PCN)

Used to obtain information about a suspected breach of planning control and what is happening on a site. Failure to comply with the requirements of a PCN may lead to prosecution. The service of a PCN does not constitute taking formal enforcement action.

Section 106 of the Local Government (Miscellaneous Provisions) Act 1976

Section 330 of the Town and Country Planning Act 1990

Alternative means of establishing information about land and its ownership.

Part One: Enforcement



Other sources of information may include HM Land Registry, District Councils' planning and building control records and Parish Councils.

- (b) Where conditions imposed on a planning permission are not being complied with**

Breach of Condition Notice (BCN)

Allows the CPA to issue a notice stating that a condition of a planning consent is not being complied with and setting out what remedial action is required. Failure to comply with a BCN within the specified period is a prosecutable offence liable to a fine of up to £1000 upon conviction.

- (c) Where there is a continuing breach of planning control**

Enforcement Notice

Used to bring an unauthorised development under planning control, by either stopping the development and/or specifying steps to be taken to rectify the situation. Failure to comply with the requirements of an enforcement notice within the time permitted is a prosecutable offence liable to a fine of up to £20,000 upon conviction.

- (d) Where there is a breach of planning control that is causing serious harm or has the potential to cause serious or irrevocable harm to amenity**

Temporary Stop Notice (TSN)

The Planning and Compulsory Purchase Act 2004 has introduced TSNs. The CPA can serve a TSN to halt breaches of planning control for a period of up to 28 days. It gives the CPA the means to

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prevent unauthorised development at an early stage without the need to issue an enforcement notice. A TSN allows the CPA to determine whether further enforcement action is appropriate without the breach intensifying or continuing. Unless withdrawn beforehand, a TSN ceases to have effect 28 days after it is served. Failure to comply with a temporary stop notice is an offence liable to prosecution.

Stop Notice

Served where the CPA considers it expedient that a relevant activity should cease before the period for compliance with an enforcement notice has expired. Failure to comply with a stop notice is an offence liable to prosecution.

Injunction

Used when the CPA consider it necessary or expedient for any factual or apprehended breach of planning control to be restrained. The scope for obtaining an injunction is wider than for serving an enforcement notice as it may refer to an "apprehended breach" and it is "personal" in that it relates to the activities of a person or persons rather than a use of land. The failure to comply with an injunction leads to a contempt of court and can lead to imprisonment.

(e) Where all of the above have not been successful

Direct action and recovery of costs

The County Planning Authority can take direct action to secure compliance with the terms of an enforcement notice. The CPA would carry out the steps required in the notice itself and then take action in the courts to recover the costs from the landowner.

Further information can be found in the:

- *Town and Country Planning Act 1990*
- *Planning and Compensation Act 1991*
- *Planning and Compulsory Purchase Act 2004*
- *Circular 10/97 - Enforcing Planning Control: Legislative Provisions and Procedural Requirements*
- *Planning Policy Guidance (PPG) 18 – Enforcing planning control*
- *RTPI Practical Advice Note No.6 – Enforcement of Planning Control (1996)*
- *RTPI Enforcement Handbook for planning enforcement officers in England and Wales (October 2000)*

6. Benefits of a consistent approach to enforcement

- (a) Protection of the environment and the public;
- (b) For clarity and fairness of approach; and
- (c) To maintain confidence in the planning system.

7. Enforcement and Land Use Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that all decisions taken in relation to development (including enforcement action) should be based on the development plan and other material considerations. It is therefore good practice to ensure actions taken by the CPA are related to policies in the development plan.

At the time of publishing, the Development Plan for Somerset consists of the Regional Planning Guidance for the South West (RPG10), adopted September 2001, saved policies of the Somerset & Exmoor National Park Joint Structure Plan Review, adopted April 2000 (the "Structure Plan"); the saved policies of the Local Plans adopted by the 5 District Councils (the

Part One: Enforcement



“District Plans”) and the saved policies of the Somerset Minerals Local Plan, adopted April 2004 (the “Minerals Local Plan”). Significant material considerations, which should also be taken into account are the emerging Regional Spatial Strategy for the South West (draft RSS for SW) Proposed Changes July 2008, and the unsaved policies of the Somerset Waste Local Plan, adopted February 2005, (the “unsaved Waste Local Plan”). Other material considerations that should be taken into account include any emerging Local Development Frameworks (LDF's) produced by the 5 District Councils, the significance of which will increase as the documents develop, and relevant national guidance.

8. Enforcement priorities – the SCC approach

Formal enforcement action can be complex, time consuming and expensive. Time and resource constraints mean that certain types of breach are given a higher priority with respect to enforcement action. Officers will almost always seek to negotiate a suitable solution before any formal action is taken.

Objective 2 The County Planning Authority will prioritise the use of its enforcement resources against unauthorised development or breaches of planning control in accordance with the following priorities (highest priority first):

- (a) Where it is causing or is likely to cause danger to the public;
- (b) Where it is adversely affecting or likely to affect a site of international or national importance for wildlife; national landscape designation; area of archaeological importance; scheduled ancient monument; listed building; conservation area or protected trees;

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- (c) Where it is causing harm to other interests of acknowledged importance; e.g. Local Nature Reserves;
- (d) Where it is causing loss of amenity to neighbouring properties;
- (e) Where the time limit for enforcement action is to expire within 6 months; and
- (f) Where development is unauthorised but is not causing harm to the amenity of the area.

9. Other agencies

A number of different agencies are responsible for the enforcement of environmental standards. The inter-relationship of powers is complex especially where pollution and waste regulation is concerned. The other key agencies are:

- (a) **The Environment Agency** – Responsible for the control of pollution and for waste management licensing. The Environment Agency's powers are often more appropriate and effective in regulating certain types of waste activities than the CPA's powers. Their powers are often quicker to implement and breaches of pollution control authorisations can lead to immediate legal action.
- (b) **The District Councils** – Environmental Health Officers have powers to monitor and enforce against statutory nuisance. This can include noise, odour and dust. The District Councils are also the planning authority for all types of development that are not the responsibility of the CPA.

- (c) **Other County Council Departments** – The CPA is responsible for monitoring the implementation of its own developments and ensuring that planning permissions are being complied with. There is an opportunity for the County Council to set a good example in its role as developer.

Objective 3 The County Planning Authority will co-operate closely and coordinate with other agencies to ensure a satisfactory solution to breaches of control. Where joint action is the most effective method of enforcement, this will be used.



Part Two: Monitoring

10. Why monitor mineral and waste sites?

Mineral and waste sites often involve large-scale operations, significant change to the environment and a long-term programme of works. The appearance of the sites and the impacts they have on the environment may change a great deal during the life of one planning permission. It is important for the CPA to be aware of the changing nature of the sites to ensure they are progressing as permitted, and to deal quickly and efficiently if there are any planning-related problems.

If sites are monitored regularly operators are less likely to assume that a visit means there is a problem or complaint. In addition regular site monitoring builds good working relationships with operators and instils confidence with the general public. It may also help operators to discuss future plans with the CPA. This reduces the chance of deliberate or accidental breaches of planning control and the need for formal enforcement action. It can also foster better understanding between operators and the local community.

11. Benefits and objectives of regular site monitoring

- (a) To build a clear picture of complex sites;
- (b) To check compliance with planning conditions and legal agreements;
- (c) As an early warning system for possible breaches of planning control;
- (d) To build relationships with other monitoring agencies;
- (e) To build relationships with site owners/operators;
- (f) To maintain public confidence in the system;
- (g) To meet annual monitoring Best Value Performance Indicators; and
- (h) To prioritise and ensure the efficient use of resources.



12. Monitoring Fees Regime

The Government recognised the complex and long-term nature of mineral and waste permissions and in April 2006 regulations were brought in to provide for the payment of a fee by owners or operators of sites benefiting from these permissions to mineral and waste planning authorities for the monitoring of the permissions. The objective of introducing the fees was to ensure that these permissions are monitored in accordance with good

Part Two: Monitoring

practice. The regulations allow for a maximum of 8 chargeable visits to an active site per year at a cost of £288 per visit and a maximum of 1 visit per year to inactive or dormant sites at a cost of £96 per visit. Although up to 8 chargeable visits are allowed the CPA only undertakes the number of visits that are necessary to ensure the permissions and the sites are monitored effectively. We are proactive in seeking agreement with operators on the number of regular visits we feel is appropriate for each site – depending on their nature and complexity – however where we cannot get agreement the CPA has the power to impose the number of visits to be undertaken (fortunately this is only necessary on a limited number of occasions).

Further information regarding the Monitoring Fees Regime is available from the Planning Enforcement Officer.

Objective 4 The County Planning Authority will ensure that development is effectively and appropriately monitored using the resources available. Whenever possible we will work with site owners/operators to agree the number of routine monitoring visits to take place each year.

13. Number of Monitoring Site Visits

Site inspections are the principal means of site monitoring. It is the aim of the CPA to visit each mineral and waste site, active or dormant, at least once a year. However, the frequency will depend on the nature, complexity and sensitivity of the site and in many cases sites will be visited far more regularly. This will depend on issues such as:

- The nature and level of activity at the site;
- The type and size of development/operation;
- The number and complexity of planning conditions;

- The number of issues requiring monitoring;
- Whether the operator has ISO 14001 or EMAS accreditation;
- The sensitivity of the location;
- The stage of the development/operation (e.g. restoration phase);
- Reports of a possible breach of planning control from the general public or other agencies; and
- Specific instructions from the Regulation Committee.

The CPA aims to visit sites in accordance with the following table:

SITE TYPE	FREQUENCY OF VISIT
Active mineral/waste site	1-8 times per year depending on state of development
Dormant mineral/waste site	Annually
County Council development conditions	Ad hoc check compliance with and on completion of development

14. Active mineral/waste sites

The majority of routine monitoring visits are carried out with the knowledge of the operators and they are invited to meet the monitoring officers on site if they so wish. Where necessary, for example where there are H&S concerns or outstanding issues that need to be clarified, monitoring visits are carried out by appointment with the operator. This gives the CPA and the site operator chance to discuss how conditions are being met, to discuss any future proposals for the site and identifies areas where conditions are not being met and the steps needed to rectify any breaches. Where a site has a history of non-compliance unannounced formal visits may also be carried out. Unannounced informal visits will be carried out regularly to undertake visual checks.

Part Two: **Monitoring**



15. Dormant or inactive mineral/waste sites

These sites will be of lower priority but it is important for the CPA to keep an eye on any changes at the sites. It is unlikely that dormant or inactive sites will need to be visited more than once a year unless a complaint is received.

16. County Council developments

It is expected that the County Council will promote best practice in its own development, be it through Council staff or contractors. However, visits will be undertaken by the CPA to ensure conditions are complied with.

17. Recording information

Following a monitoring visit a comprehensive report and covering letter is produced (see Appendix 1) and sent to the operator. The report gives an explanation of the situation relating to each condition and uses a “traffic light” system to help operators quickly identify key areas to be addressed. The covering letter gives an overview of the compliance (or otherwise) of the site with the conditions of the planning permission, details work to be carried out / information to be submitted etc. and provides timescales for action.

18. Other site visits and Liaison Group meetings

Throughout the year sites may be visited by Planning Officers as part of the planning application process. In addition valuable site monitoring information is obtained from Liaison Group meetings held in connection with major active quarry and waste disposal sites.

Part Three: Complaints Procedure

19. Purpose

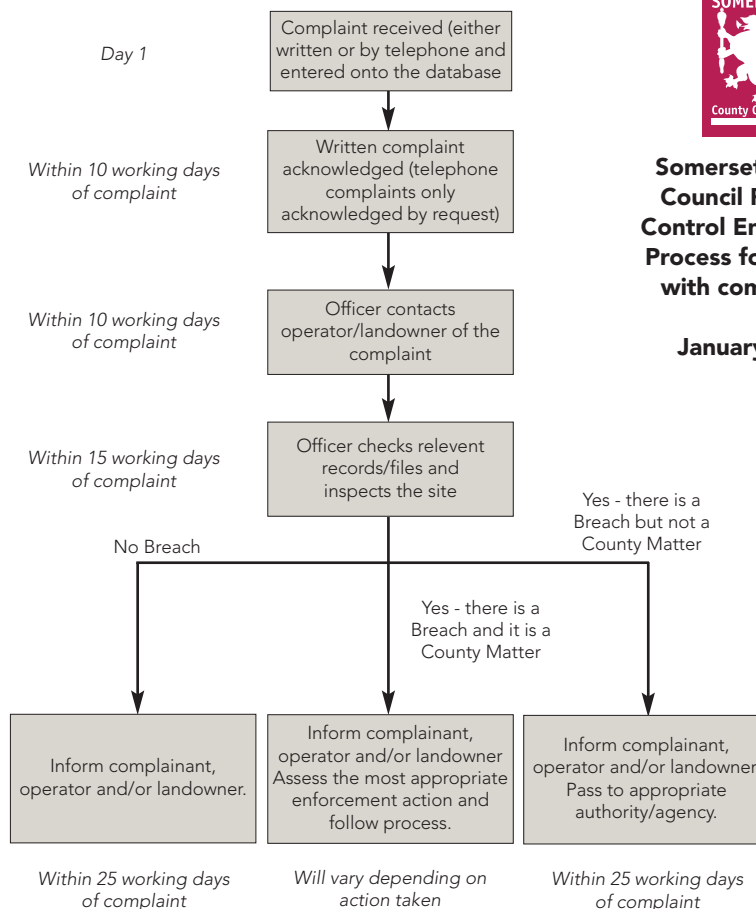
This section sets out the way in which the CPA will deal with complaints alleging breaches of planning control. This will ensure complaints are dealt with fairly and consistently. This document:

- (a) Informs people what to expect from the CPA when they make a complaint;
- (b) Informs people about the stages of the investigation; and
- (c) Sets a timetable for the CPA to deal with complaints.

The CPA expects complaints to be made in writing, although telephone complaints will be acted upon. The CPA also expects that complaints will be genuine (i.e. not anonymous, defamatory or libellous). Anonymous complaints will not be investigated unless public safety issues are identified or significant environmental harm would be caused. Complainants' details will be kept confidential, although if the case should go to court their identity may have to be disclosed. In exceptional cases complainants may be required to give evidence in court.

Objective 5 The County Planning Authority will quickly and efficiently investigate alleged breaches of planning control that are drawn to its attention. Complainants will be kept informed about the investigation and its outcome.

20. Process for dealing with complaints



Somerset County Council Planning Control Enforcement Process for dealing with complaints.

January 2010

The existence of this timetable does not prejudice attempts to achieve a negotiated solution to enforcement problems in accordance with the objectives set out elsewhere in this document.

Part Three: Complaints Procedure

In cases where a suspected breach of planning control could have an impact on public safety or a significant impact on the environment, the CPA will look to act as quickly as possible. During working hours Officers will attempt to respond within 1 working day of a complaint being received.

Objective 6 In circumstances where a suspected breach of planning control is considered to jeopardise the safety of the public and/or the environment, investigations will commence within 1 working day of the complaint being received.

21. Procedure

When dealing with a complaint the CPA will decide on the best course of action in each case.

- (a) **Investigation** - The CPA will investigate any alleged breach of planning control whether it is the result of a complaint or discovered through routine monitoring. Site operators and complainants will be contacted to establish the facts of the case.
- (b) **Evidence** – Written and photographic evidence will be collected when sites are visited.
- (c) **Prioritisation** – Cases where serious detriment is being, or could be, caused will be afforded the highest priority.
- (d) **Negotiation** – Where possible the CPA will find a negotiated solution to complaints. Formal enforcement action can be very costly in terms of time, resources and expense. A reasonable solution can often be found if dialogue between all parties is established and the facts are made clear. The CPA will not countenance continued breaches of planning control and will move to take action quickly to remedy the breach.

- (e) **Expediency** – It will not always be expedient to take formal action, and each case will be looked at on its merits. For example, a technical breach that is not adversely affecting local amenity or potentially causing a harmful impact to neighbours or the environment may not warrant resources being directed to resolve the situation. Enforcement action is a discretionary power and the CPA will always consider whether it is expedient to take formal action.

22. Communication and records

The CPA will endeavour to keep the complainant, operator and the local County Councillor and, as appropriate, other interested parties informed at all relevant stages of enforcement action.

The CPA will keep records of all complaints made. These records will not generally be available to the public; personal information supplied by people making a complaint is covered by the Data Protection Act and will not be disclosed without the consent of the person making the complaint.

If members of the public wish to check the progress of an investigation, they may make an appointment to discuss the case with the Enforcement Officer.

23. If a complaint is not dealt with satisfactorily

If a member of the public is not happy with the way a complaint is dealt with they may contact the Planning Enforcement Officer or the Group Manager (Environmental Management) of the Environment Directorate to discuss their concerns. The County Council has a complaints procedure which will be followed in such cases, and in the first instance the Group Manager will investigate the matter and report back comprehensively on their findings.

Part Three: **Complaints Procedure**

If they are still unhappy following this initial response the Complaints Procedure allows for a further two stages of investigation. If this Procedure is completed and they are still not satisfied they may refer the case to the Commissioner for Local Government (the Ombudsman) who deals with cases of alleged Local Government maladministration. The Ombudsman takes into account all the circumstances of the case when judging the complaint. He can be contacted at:

**Local Government Ombudsman, The Oaks No 2, Westwood Way,
Westwood Business Park, Coventry, CV4 8JB.
Telephone: 024 7682 0000**



Part Four: Further Information

24. Publicity

This document will be available at District Council offices and libraries and from Parish Councils within Somerset and on the Internet via: www.somerset.gov.uk. Copies can also be obtained from the Planning Enforcement Officer.

25. The role of the County Councillor

Complaints may be made direct to a County Councillor who will inform the Planning Enforcement Officer on the behalf of their constituents.

26. Contact details

The Planning Enforcement Officer and the Planning Monitoring Officer are based in the Environment Directorate at County Hall. These officers work with the Development Control planning case officers to establish whether breaches of planning control have occurred, and liaise with operators to try and achieve solutions to enforcement problems.

Planning Enforcement Officer

Planning Control
Environment Directorate
County Hall
TAUNTON
TA1 4DY

Telephone 01823 358226 (Direct line)

Planning Monitoring Officer

Planning Control
Environment Directorate
County Hall
TAUNTON
TA1 4DY

Telephone 01823 356026 (Direct line)

General contact details for Planning Control:

Tel: (01823) 358254

Fax: (01823) 356114

e-mail: planning@somerset.gov.uk

Our website also contains a wealth of planning related information – www.somerset.gov.uk/planning.

27. Universal Access to Information

Planning Control as part of Somerset County Council will endeavour to provide all services of equal quality that meet your needs and fulfil your rights. You can expect to be treated fairly, with respect, dignity and understanding whoever you are and whatever your background.

This document is also available on request in Braille, large print, tape and disc and can be translated into different languages.



Appendix 1

Minerals Site Visit Report

Site Name: _____

File Ref: _____

Type of site: _____

Operator: _____

Operator Present: _____

Date: _____ Time: _____

Reason for visit: _____

Meeting Announced/Unannounced: _____

Those Attending: _____

General Site Conditions: ALL SITES -

Weather: _____

Ground: _____

Approach Roads: _____

Access: _____

Signing: _____

Site Active / Inactive / Dormant:

Has work commenced?

Site operating in Compliance with Planning Conditions and requirements?

Have all required schemes been:

Submitted? Approved? Implemented?

Is there a section 106 agreement attached to Planning Permission?

Is the Section 106 Agreement being complied with?

Does it appear that there are any unauthorised activities / structures at the site?

Provide details of unauthorised use and/or development below.

Other Visit Details:

Appendix 1

Definitions of report phrases

Notes

- GREEN:** At the time of the visit it appeared that this condition was being fully complied with.
- AMBER:** At the time of the visit the requirements of this Condition are still in force. The operator should be mindful of any requirements of the Condition throughout the implementation of the Planning Permission to avoid non-compliance.
- RED:** At the time of the visit it appeared that this Condition was not in full compliance and action must be taken immediately to comply with its requirements. Enforcement action may be taken by the County Planning Authority if this issue is not resolved.

App No. **Condition Order** **Compliance Level**

Signed:

Date:



Notes

