

# Enforcement Plan 2019



*Retreat Farm 2014 showing land condition prior to negotiation to resolve drainage issue*

## Contents

1. Introduction.....	3
2. Planning Policies .....	5
3. Type of Enforcement Issues .....	6
4. Compliance with Planning Control.....	7
5. Resources.....	9
6. Monitoring.....	9
7. Complaints.....	10
8. Other Agencies or Authorities.....	12
9. What Is Expected of Mineral and Waste Site Operators, Developers and Landowners .....	13
APPENDIX.....	14

# Enforcement Plan

## 1. Introduction

1.1 This Enforcement Plan has been prepared in line with the guidance contained in the Government's Planning Practice Guidance (PPG), which includes ensuring effective enforcement guidance document and paragraph 58 of the Revised National Planning Policy Framework (NPPF).

1.2 The purpose of the Plan is to set out, for the benefit of the public and developers, the objectives and priorities that the County Planning Authority (CPA) will seek to follow in pursuance of its monitoring and enforcement responsibilities including the investigation of alleged cases of unauthorised development. It will also assist the CPA in considering the most appropriate action to take on specific enforcement and monitoring issues.

1.3 The County Council as the CPA has responsibility for discharging the development control planning functions associated with:-

- minerals extraction (as the Mineral Planning Authority),
- the management of waste (as the Waste Planning Authority) and
- the County Council's own development - these are developments approved under the provisions of Regulation 3 of the Town and Country Planning General Regulations 1992.

1.4 The CPA has responsibility for enforcing and monitoring development associated with mineral extraction and the management of waste where expedient to do so. This would include unauthorised development and non-compliance with planning conditions which are both known as breaches of planning control<sup>1</sup>. Worcestershire has extensive mineral resources that are of both national and local importance. Waste management facilities are required to meet the needs of business and the public and to minimise the amount of waste which has to go to final disposal in landfill sites.

1.5 The CPA is not able to take enforcement action to ensure compliance with conditions attached to planning permissions granted by itself for its own development although local district planning authorities can do so. This Plan, therefore, deals only with the enforcement of planning control for mineral and waste management development.

1.6 It is a planning authority's responsibility to consider properly what to do once it becomes aware of a breach of planning control. It has no duty to take enforcement action unless it thinks a breach is so serious as to cause planning harm and the CPA considers it is expedient to do so, having regard to the Development Plan and other material considerations.

1.7 The relevant planning legislation allows some limited development without the need for someone to make a planning application. This is known as permitted development. If a structure or a change of use of land is permitted development a planning authority cannot take enforcement action against it.

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<sup>1</sup> Section 171A of the Town & Country Planning Act 1990 (as amended)

1.8 Breaches of planning control can occur in two main ways: -

- a) Activities that have been undertaken without complying with the conditions of a planning permission already granted; and
- b) Development that has been undertaken without planning permission on land that has not been previously used for that purpose or failing to comply with any condition or limitation subject to which planning permission has been granted

1.9 In general terms, the approach to dealing with (a) is a proactive one, whilst the approach to dealing with (b) is a reactive one, although clearly there will be some overlap between the two.

It must be remembered that non-compliance with the terms of a planning permission or carrying out development without planning permission is not a criminal offence but failure to comply with formal enforcement action, i.e. non-compliance with the requirements of a valid enforcement notice usually is. There are also time limits for taking enforcement action.

1.10 The Revised NPPF states at paragraph 58: -

"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. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate."

1.11 Paragraph 6 of the PPG states that an Enforcement Plan is important because the plan: -

- i) Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- ii) Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- iii) Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- iv) Provides greater certainty for all parties engaged in the development process.

This Enforcement Plan has had regard to:

- The Town and Country Planning Act 1990;
- The Planning and Compensation Act 1991;
- The Planning and Compulsory Purchase Act 2004;
- Planning Act 2008;
- The Localism Act 2012;

- The Waste (England and Wales) Regulations 2011;
- The Development Plan;
- The need to maintain the integrity of specially protected areas, including Special Areas of Conservation, Sites of Special Scientific Interest and Conservation Areas;
- The need to achieve a reasonable balance between protecting amenity and other interests of acknowledged importance throughout the authority's area and enabling acceptable development to take place, even though it may initially have been unauthorised.

## **2. Planning Policies**

2.1 The Development Plan in Worcestershire currently consists of:

- Adopted County of Hereford and Worcester Minerals Local Plan 1997
- Worcestershire Waste Core Strategy (WCS)
- SOUTH WORCESTERSHIRE DEVELOPMENT PLAN (SWDP) 2016
- Bromsgrove District Plan (BDP)
- Borough of Redditch Local Plan No. 4
- Wyre Forest District Council's Core Strategy 2006 – 2026.
- Wyre Forest District Council's Site Allocations and Policies Local Plan 2006 – 2026
- Wyre Forest District Council's Kidderminster Central Area Action Plan 2006 - 2026
- Together with the adopted Neighbourhood Plans in Worcestershire.

2.2 The Development Plan aims to protect the environment, steer development to where it should be allowed and away from land which should be protected. Amongst other matters, it recognises the requirement to ensure a supply of minerals and adequate waste management facilities for the needs of the community. This is balanced with its responsibility to keep the environmental impact and other effects of such development to an acceptable level and ensure that new development is sustainable.

2.3 In taking decisions on the need for enforcement action, the County Planning Authority must take account of the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires decisions to be taken with due regard to the Development Plan unless material considerations indicate otherwise.

### 3. Type of Enforcement Issues

3.1 Enforcement action may be required in many circumstances. The CPA through monitoring permitted minerals and waste developments, and investigating complaints received from members of the public has identified the following as potential areas in Worcestershire where breaches of planning may occur: -

(a). Unauthorised waste management development

(b). Unauthorised mineral extraction

(c). Non-compliance with conditions on planning permissions that may relate to the following issues (note that of mineral and waste planning permissions, this is not an exhaustive list but illustrates typical areas of non-compliance): -

- Soil stripping and storage
- Extraction
- Vehicle movements,
- Noise
- Dust
- Odour
- Hours of operation
- Mineral Processing
- Drainage
- Landscaping
- Restoration and Aftercare

(d). Poor operational standards on existing sites

3.2 The issues above can lead to serious harm to the environment, to public amenity, to achieving Development Plan objectives and, if not dealt with effectively, to loss of public confidence in the planning system. Where serious harm is likely, action needs to be quick and effective to minimise the effects of unauthorised development, particularly in areas of environmental sensitivity.

#### **4. Compliance with Planning Control**

4.1 In its role of securing compliance with planning control, the CPA will have regard to relevant legislation and guidance. The PPG gives procedural guidance on how to use the various enforcement powers available and provides links to the relevant legislation.

4.2 The PPG suggests that when considering whether to use its discretionary enforcement powers, the planning authority should have regard to the revised NPPF and particularly paragraph 58. It also states that the provisions of the European Convention on Human Rights such as Article 1 of the First Protocol (Protection of Property), Article 8 (Right to Respect for Private and Family Life) and Article 14 (Prohibition of Discrimination) are relevant when considering enforcement action. It states:-

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

4.3 The integrity of the planning system depends on planning authorities' readiness to take effective enforcement action when it is expedient to do so. In deciding whether it is expedient to take enforcement action Worcestershire County Planning Authority will take into account:-

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

4.4 Planning authorities have several legal processes available to them to enforce planning control. These are set out in Appendix 1. However, public expectations about the speed with which effective action can be taken may exceed the speed at which legal action can resolve a breach. The PPG acknowledges that addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. Breaches can be genuine mistakes and in some instances formal action may not be appropriate.

4.5 Where unauthorised development appears acceptable on its planning merits the CPA may invite the submission of a retrospective planning application to regularise the breach of planning control which can be done under the provisions of section 73A of the Town and Country Planning Act 1990. In these cases the planning application will be subject to the same process as any other planning application including consultation with the public, statutory and other consultees before a decision is taken and it cannot be assumed that permission will be granted.

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

4.7 The approach of Worcestershire County Council as the CPA will be to seek to remedy any breach of planning control in a timely manner. Wherever possible this will be done in the first instance by negotiation and persuasion to get the breach remedied voluntarily, or where appropriate, to regularise unauthorised development by the granting of a planning permission, subject to conditions, but in all cases being consistent with the relevant policies of the Development Plan and the NPPF.

4.8 Where negotiation and persuasion is unsuccessful or not possible, either because current planning policy would not support the development, or those contravening will not submit a planning application for determination, or where there is serious harm to the public amenity, then Worcestershire County Council will consider taking action commensurate with the breach of planning control.

*POLICY EP1 Worcestershire County Council, in exercising its function of ensuring compliance with planning control, will:*

(i) Where a breach of planning control is causing serious harm to the environment, or public amenity, commence an investigation to gather evidence to enable appropriate action to stop further harm;

(ii) Where investigations reveal a breach of planning control, the CPA will in the first instance, seek to resolve any problems by offering the transgressor an opportunity to remedy the breach within a reasonable period of time without the need to resort to formal enforcement action;

(iii) Only take formal enforcement action where it is necessary and appropriate to do so to protect the public interest, or protect the environment and the amenity of the area in accordance with the provisions of the Development Plan and the NPPF;

(iv) Ensure that action is always commensurate with the breach of planning control and is proportionate, taking into account the potential effect on those against whom action is taken as well as those affected by the breach;

(v) Give due regard to current legislation, ministerial guidance, appeal decisions and relevant judicial authority;

(vi) Take into account national planning policy, the relevant development plan policies, and comments made by affected members of the public and statutory consultees;

(vii) Take into account the need to achieve a reasonable outcome when protecting amenity and other interests of acknowledged importance such as preserving our heritage, to improve quality of the environment, to protect the green belts and conserve good agricultural land throughout the authority's area;

(viii) Enable acceptable development to take place;

(ix) Maintain effective liaison and contact with the general public and developers.



4.9 The recipient of an enforcement notice<sup>2</sup> has the right of appeal to the Secretary of State against the notice and consequently a notice can be quashed. Other formal enforcement actions such as Stop Notices can also be challenged by the recipient through the courts. Appeal costs may be awarded against the local planning authority in the event that the authority has behaved “unreasonably” and the appellant has incurred unnecessary expense. Compensation can also follow planning authorities’ enforcement actions in certain cases. It is therefore important that the County Council ensures it is acting in the public interest and has taken into account all relevant matters before taking formal enforcement action.

## **5. Resources**

5.1 The enforcement of planning control, including the monitoring of permitted sites, is undertaken by the Monitoring and Enforcement officer of the CPA.

5.2 Delivering an effective Monitoring and Enforcement service takes considerable resources not only monetary but also in officer time. It will require prioritisation of workload within the constraints of the resources available. The CPA also has to balance the demands on this part of the service against other demands and will review the allocation of resources regularly. The Council has a general discretion to take enforcement action and there is no statutorily prescribed level of monitoring that has to be undertaken although there is a statutory duty to undertake both functions.

5.3 If enforcement is to be effective there is a need to draw upon a variety of skills within the Council and from outside agencies. For example, specialist legal, archaeological, ecological, pollution control, environmental health and highway advice may well be required before deciding to initiate appropriate action.

5.4 Investigating and remedying alleged breaches of control can be labour intensive and time consuming. The resources allocated both in terms of staff and equipment (including IT and GIS based recording systems) for this purpose will, therefore, need to be reviewed on a regular basis as local circumstances change to take account of a fluctuating workload and advances in technology. Resources allocated to monitoring and enforcing planning control will also be determined by the Council’s overall budget and its other service demands.

## **6. Monitoring**

6.1 The enforcement of planning control is well established as part of the general planning system. However, unauthorised mineral and waste management operations can pose particular enforcement problems that necessitate frequent monitoring.

6.2 To ensure confidence in the planning system it is essential that the public and developers (operators and landowners) are made aware of a fair and effective system of monitoring of all authorised and unauthorised development.

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<sup>2</sup> See Appendix for explanation of Enforcement Tools

6.3 Monitoring of permitted sites is an essential tool of controlling development. It is this 'pro-active' approach that often enables the CPA to prevent likely breaches of planning control arising before they occur or before they become established. It enables immediate action to be taken to ensure that deterioration in the situation does not arise, thereby lessening the impact on resources at a later date.

A 'pro-active' approach can only be pursued with a structured monitoring regime, with appropriately trained staff and the technical equipment to carry out these duties. The County Council is also required to periodically inspect waste sites as detailed in S19 of the Waste (England and Wales) Regulations 2011.

6.4 Where practicable and dependent on the various operations which are carried out on mineral and waste management sites, Worcestershire County Council will seek to allocate resources to carry out regular monitoring visits to permitted developments as often as necessary to secure compliance with and monitor planning conditions. Where there are complex conditions or a history of non-compliance, these sites will be inspected on a more frequent basis. In order to manage the monitoring of sites an outline programme of monitoring visits to mineral and waste sites will be drawn up at the beginning of each financial year.

*POLICY EP2 Worcestershire County Council will allocate a level of resources, subject to other budgetary priorities, to the enforcement of planning control sufficient to achieve:*

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

## **7. Complaints**

7.1 It is the responsibility of the County Council to deal with complaints relating to alleged breaches of planning control for mineral and waste development and to do so in an open and transparent way. Planning complaints that are not associated with mineral and waste development will be forwarded to one of the relevant six district council local planning authorities in Worcestershire for their consideration.

7.2 Worcestershire County Council undertakes to deal with complaints about minerals and waste development, as follows:

- Register and acknowledge the complaint within 5 working days of receiving it.
- Treat the complaint as confidential if this is requested and is practicable, and in accordance with data protection legislation.
- Respond to the complainant within 10 working days of the complaint being received and explain what action the Council intends to take and when.

- Where appropriate investigate the breach, or alleged breach, of planning control and where necessary having regard to **Policy EP1** take action to remedy the breach within an appropriate timescale. When an operator has been set a date for a breach to be remedied the complainant will be informed.

7.3 Worcestershire County Council will ensure that anyone who does complain about a breach of planning control is dealt with in a polite, efficient and responsive way. All complaints that are received by the Council will be recorded in an electronic database. The database will enable the receiving officer to record the nature of the complaint and any action taken to resolve it. Keeping a record of complaints will enable the Council to assess and improve its overall service, and identify evidence of problems with particular developments or particular issues and enable an efficient and effective response.

7.4 It may not always be necessary to visit sites to satisfactorily resolve a complaint. However, it may be necessary visit the site to establish whether there has been a breach of planning control. Where, following the investigation of a complaint, the Council decides not to take formal enforcement action the reason for this decision will be explained to the complainant. If, however, the Council elects to instigate enforcement proceedings the complainant will be notified of the progress of that action in a timely manner however some sites may have large numbers of complainants or take significant time to investigate. This may affect the length of time it takes to update complainants

7.5 Complainants will be asked to identify themselves and provide full contact details, including a contact email address and a brief description of their complaint, so that they can be kept informed of the Council progress in investigating the complaint. If requested, these details will be kept confidential in accordance with data protection rules.

Complaints made anonymously will not normally be investigated unless the complainant can demonstrate a reasonable reason for not providing their details and the complaint is causing substantial harm.

Whilst the County Council will always respect a complainant's wish to remain anonymous there may be circumstances in which it may be difficult for the County Council to effectively investigate a complaint without jeopardising a complainant's anonymity. In such cases a Council officer will explain this to the complainant and the complainant will be asked if they wish the investigation to proceed. Occasionally, enforcement action may lead to prosecution in the courts and all information obtained in investigating the case may need to be revealed, including complainant's names.

7.6 If the complainant who has made a formal complaint but remained dissatisfied with the outcome of any investigation, you may complain to the Ombudsman and information on how to do this will be given to you by the Council.

The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and deals only with aspects concerning the conduct of the investigation.

*POLICY EP3 In dealing with all complaints concerning an alleged breach of planning control Worcestershire County Council will:*

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

## **8. Other Agencies or Authorities**

8.1 In addition to the powers available to the Council relating to breaches of planning control there are other agencies or Authorities which have regulatory powers and responsibilities that can assist in these matters (e.g. Environmental Health Officer, The Environment Agency, Health and Safety Executive etc.).

If appropriate the CPA will liaise with these agencies, and seek to work with them, to secure an efficient remedy to a breach and where necessary joint or complimentary formal action may be taken.

*POLICY EP4 When investigating an alleged breach of planning control Worcestershire County Council will:*

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

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

9.1 In exercising and executing its responsibilities as a planning authority Worcestershire County Council expects mineral and waste site developer's operators and land owners:

(a) To comply with the requirements of any planning permissions and, where there is a need for permission, not to carry out that work before planning permission is obtained. In this respect, they should not anticipate planning permission being granted and should not take action, which would cause damage, or serious harm to interests of acknowledged importance.

(b) To work with Worcestershire County Council in employing the best practicably available techniques to improve the design, operation, restoration and aftercare standards arising from the winning and working of minerals and the operation of waste management facilities.

(c) To co-operate in the appropriate and lawful monitoring of their sites and investigation of unauthorised development and alleged breaches of planning control including enabling reasonable access to those sites for these purposes.

## **10. Further Information**

Further information regarding the monitoring and enforcement of minerals and waste development by Worcestershire County Council can be obtained from: -

The Council's website at <http://www.worcestershire.gov.uk/planning>

By email: [PlanEnforcement@worcestershire.gov.uk](mailto:PlanEnforcement@worcestershire.gov.uk)



***Retreat Farm 2017 showing the progress of the drainage work, this shows how monitoring and negotiation leads to resolution of issues connected with a planning permission.***

## **APPENDIX**

### **MONITORING AND ENFORCEMENT “TOOLKIT”**

The following notices and tools are available to the County Council in dealing with breaches of planning control: -

#### **Planning Contravention Notice (PCN)**

This is served on landowners, operators or other relevant people to obtain information about a suspected breach of planning control. The information provided is used to decide whether further action is required. Failure to reply to the notice could lead to a fine upon conviction.

#### **Breach of Condition Notice (BCN)**

This requires an operator or landowner to comply with planning permission conditions that they have breached. There is no right of appeal and failure to comply could result in prosecution and a fine for each offence.

## Enforcement Notice

This is used when a serious breach of planning control has occurred. The Notice does not come into effect until at least 28 days after its date of issue. A person served with an Enforcement Notice can appeal during this period. The effect of the appeal is to suspend the Notice.

The appeal is usually determined by an independent Planning Inspector. If the appeal is dismissed or no appeal is made, then failure to comply with the requirements of the Notice could result in a prosecution and a fine for each offence.

## Stop Notice

This can be issued with or following an Enforcement Notice in order to require a particularly harmful activity to cease before the Enforcement Notice comes into effect. There is no right of appeal, but the Council may have to pay compensation if the associated Enforcement Notice is, on appeal, quashed on legal or planning grounds. Non-compliance with a Stop Notice is an offence which carries a fine.

## Temporary Stop Notice

If the breach of planning control is causing significant environmental effects, a Temporary Stop Notice can be served. This requires the unauthorised activity to cease immediately for a period of no more than 28 days.

## Injunction

An Injunction is a Court Order requiring the defendant to either refrain from doing a specific act or requiring the defendant to carry out a specific act and is therefore used to prevent or stop harmful activity or force remedial measures to be carried out.

## Direct Action

If a person fails to comply with the requirements of a notice the County Council can enter the land and undertake works in compliance with a notice. The cost would then be charged to the landowner but would have to be borne by the Council in the short term until the money is collected. Direct action may be pursued at any time after the compliance period of a Notice has passed.

However direct action would only be instigated following an examination of a cost benefit analysis and be considered to be in the public interest

## Right of Entry

Investigation officers have the immediate right of entry onto sites under the provisions of S196A and S196B of the Town and Country Planning Act 1990, to all non-residential land and buildings. Twenty-four hours' notice must be given if access is required to a residential property. If access is denied for any reason, a formal Right of Entry Notice can be served. If entry is subsequently refused, a warrant to effect entry can be applied for from a serving Magistrate.