

**ADOPTION OF FORMAL STANDARDS AND CODE OF PRACTICE FOR
DEVELOPMENT CONTROL ENFORCEMENT**

Report of the Director of Environment

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1. Purpose of Report

To agree formal standards and a Code of Practice, in the form of a manual, relating to the County Council's development control enforcement and site monitoring functions.

2. Summary

2.1 The County Council is the planning authority responsible for mineral and waste developments within Hertfordshire. In carrying out these duties, the Council undertakes all enforcement action relating to such developments where a breach of planning control has occurred. The Council also undertakes the routine monitoring of sites, in conjunction with its enforcement function, in order to assist in the identification of breaches of planning control and to ensure compliance with conditions imposed by planning permission.

2.2 As the taking of enforcement action is discretionary, there is no legal requirement for the County Council to take action in all cases. Currently there is no formal protocol to assist officers when considering enforcement matters and this could lead to inconsistency in the approach to enforcement. Government guidance advocates that local planning authorities should have clearly identified processes and procedures to inform and advise members of the public about the planning system, and this includes enforcement matters. The advent of the Human Rights Act 1998 reinforces the need for openness and consistency as the decision to take, or not to take, action may adversely affect someone's rights within the Act.

2.3 At the Environment Select Committee of 10 July 2001, a report into the scrutiny of development control enforcement and monitoring provision within Hertfordshire concluded that the establishment of a formal protocol incorporating standards for monitoring and enforcement would be in line with sustainable development objectives. As part of this it was considered that an enforcement manual would clearly set out the objectives of monitoring and enforcement in Hertfordshire, the Council's enforcement priorities, the procedure for documenting cases and target time limits for enforcing a case. It was considered that this would enable the enforcement function to be more streamlined and effective. It was also recognised that this would help to satisfy the Local

Government Ombudsman if a complaint was made in respect of the Council's actions and would help safeguard the Council from claims arising from the Human Rights Act 1998.

- 2.4 The same report also considered the resource implications to the Council in undertaking its enforcement and site monitoring duties in line with an adopted protocol. To this effect, it was considered that additional resources should be made available, enabling the recruitment of an additional member of staff to deal with monitoring and enforcement matters, as well as fund additional legal and consultancy costs. This recommendation was incorporated within the Environment Department's budget provisions for 2002-2003 onwards.
- 2.5 Consequently, it is appropriate for the Council to set out and adopt a formal protocol in relation to its enforcement function to enable officers to follow procedures and make reasoned judgements, justifying these as a matter of course. It is also appropriate for procedures to be set out to ensure the tightening up of the Council's site monitoring duties, ensuring that the Council's enforcement function is proactive. In order that the Council's enforcement function is accountable and transparent, and in order that its performance can be measured, it would also be of benefit to publish an annual report detailing the Council's site monitoring and enforcement activities over the preceding twelve months.

3. Conclusion

The report concludes that the Development Control Committee should recommend that the Director of Environment adopts and publishes the protocol for enforcement and site monitoring as set out in Appendix 1, comprising formal standards and a Code of Practice, which sets out:

- (i) the adoption of explicit standards for carrying out site inspections;
- (ii) the adoption of explicit standards for investigating potential breaches of planning control and taking enforcement action as appropriate;
- (iii) a requirement for publication of an annual report into the performance of the enforcement function of the County Development Unit.

1. Background

- 1.1 The County Council is the local planning authority in respect of developments deemed to be 'county matters', these being mineral and waste development. This involves considering planning applications for such developments and granting planning permissions where considered appropriate. There is a need, however, for these developments to be carried out in accordance with the extant planning permission, usually through the imposition of conditions.
- 1.2 The County Council is also responsible for ensuring that development does not take place without the benefit of planning permission. Consequently, the Council has the power to take enforcement action, in accordance with the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991), where there has been a breach of planning control.
- 1.3 Enforcement is a discretionary power and the Government advises that formal enforcement action should only be taken where the local planning authority considers it expedient to do so. As such, in considering whether to take formal enforcement action, the decisive issue for the County Council is whether the breach of planning control unacceptably affects public amenity or the existing use of land and buildings, which merit protection in the public interest. Such action must also be commensurate with the breach of planning control it seeks to address. Due to the discretionary nature of enforcement, there is often confusion and it can appear that there is some degree of inconsistency in how the Council undertakes its duties as, ultimately, there can be the potential for subjective judgements to be made in the decision making process.
- 1.4 There could also be a risk of criticism being made of the Council in undertaking its duties, by either an appeal to the ombudsman resulting in compensation issues or by formal complaints being made.
- 1.5 The advent of the Human Rights Act 1998 also has implications for the Council in undertaking its enforcement role. Rights within the Act may be breached if the Council takes enforcement action that is not proportionate to the breach of planning control it seeks to address. Similarly, where there is a clear breach of planning control the Council's delay in taking enforcement action, or its decision not to take action, may adversely affect the rights of third parties who have been affected by the breach of planning control.
- 1.6 A report into the scrutiny of development control enforcement and monitoring provision within Hertfordshire was considered at the Environment Select Committee of 10 July 2001. This concluded that, in order to enable the enforcement and monitoring function to become more streamlined and effective, an enforcement manual should be produced setting out the Council's objectives in terms of monitoring and enforcement. It was considered appropriate that such a manual should set out the Council's enforcement priorities, its procedure for documenting cases and target time limits for enforcing a case. This would help to safeguard the County Council if a complaint was made to the Local Government Ombudsman in respect of the Council's actions or if a claim were to arise from the Human Rights Act 1998.

- 1.7 The resource implications to the Council in carrying out the monitoring and enforcement function were also considered by this report, concluding that additional funding should be made available to enable the recruitment of an additional member of staff to assist with these duties. This funding would also enable additional legal and consultancy costs to be provided. Accordingly, the Environment Department's budget provisions for 2002-2003 incorporated these recommendations, although not to the full extent.
- 1.8 In order that these issues are addressed, there is an acknowledged need for a consistent approach in the way the County Council undertakes its development control enforcement duties, enabling officers to follow procedures and make reasoned judgements when taking enforcement action. This would also enable the tightening up of the present monitoring regime, ensuring that the Council's enforcement function is proactive as it assists in the early identification of potential breaches of planning control. The adoption of a protocol setting out the Council's standards and Code of Practice in relation to enforcement is considered the best means of achieving this. It is envisaged that this will enable the enforcement function of the Council to operate more efficiently and with less confusion or ambiguity.
- 1.9 It is also envisaged that the adoption of enforcement standards in a Code of Practice will enable the Council's enforcement function to be more accountable and transparent. This will be achieved primarily through the commitment within the protocol to publish an annual report detailing the performance of the enforcement and site monitoring function over the preceding twelve months.
- 1.10 Accordingly, the proposed standards and Code of Practice is attached as Appendix 1 to this report.
- 1.11 The proposed standards and Code of Practice commits the Council to carrying out its enforcement and site monitoring function in a consistent and expedient manner. In so doing it sets out appropriate standards of delivery of service in respect of the following key areas:
- setting out a mechanism for determining the annual number of visits to be made to each operational site in the county, based on a range of factors including environmental considerations and previous history of the site and operator, ensuring that the Council's site monitoring procedures complement its enforcement function;
 - ensuring that the site monitoring function of the Council becomes proactive allowing the early remedy of breaches of planning control, enabling the Council to take all measures to prevent complaints being made to the ombudsman or claims made under the Human Rights Act 1998;
 - setting out a standard procedure for investigating potential breaches of planning control, ensuring that this is carried out quickly and effectively in relation to response times based on a number of factors;
 - setting out a standard procedure for taking enforcement action, ensuring that this is carried out in a streamlined and expedient manner;

- publishing an annual report detailing all aspects of the Council's enforcement function, including site monitoring, to ensure that the service delivered is accountable and transparent.

2. Conclusions

- 2.1 That the Director of Environment adopts a formal protocol, in the form of Standards and Code of Practice for development control enforcement, attached as Appendix 1 to this report, detailing standards of service and procedures to be followed by officers in undertaking the Council's enforcement function and its related duties.

3. Financial implications

- 3.1 There are no additional financial implications arising from this report. All resource implications in respect of the provision of additional resources to be made available for the Council's development control enforcement function were considered by the report to the Environment Select Committee of 10 July 2001, and budget provision has been made to fund the implementation costs arising from the adoption of the standards set out in Appendix 1.

Background information used by the author in compiling this report

Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991);

Planning Policy Guidance Note 18: Enforcing Planning Control (December 1991);

Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' (DoE 1997);

Enforcing Planning Control: Good Practice Guide for Local Planning Authorities (DETR 1997);

Good Practice Guide on Monitoring Minerals and Waste Management Sites (Planning Officers' Society 1998);

Hertfordshire County Council's Enforcement Concordat (April 2000).

APPENDIX 1

1. Introduction

Objectives

- 1.1 This document sets out Hertfordshire County Council's standards and code of practice in relation to its development control enforcement powers. These powers are currently exercised under delegated authority by the County Development Unit (CDU), Environment Department. The Code of Practice outlines the standard of service that can be expected from the enforcement of breaches of planning control, committing the County Council to carrying this out in a professional and responsible manner,. It also enables the County Council to be consistent and accountable to others for its enforcement actions.

2. The County Council's Enforcement Function

- 2.1 The County Council is both the Minerals Planning Authority and Waste Planning Authority, with responsibility for planning issues deemed to be 'county matters'. Such matters are primarily defined within Schedule 1 of the Town and Country Planning Act 1990 as being, amongst other things, those associated with mineral working and related development, and waste management and disposal developments¹. Where there are breaches of planning control relating to county matters, the County Council has the power to take enforcement action as appropriate, where this is in the public interest. Furthermore, in respect of all operational minerals and waste sites with extant planning permissions granted by the County Council, officers undertake routine monitoring to ensure compliance with conditions imposed as part of such permissions.

3. Background to the Publication of the Enforcement Code of Practice

- 3.1 All enforcement units within the County Council, including CDU, jointly published and subscribed to '*Our Business Pledge: the service you can expect when working with our enforcement units*', otherwise known as the Enforcement Concordat. This was published in April 2000 and sets out the County Council's commitment to carrying out its enforcement functions in a fair, consistent and balanced manner. This document, however, does not deal specifically with the County Council's role as local planning authority, nor does it consider enforcement matters in any depth, hence the need for development control enforcement standards and code of practice.
- 3.2 '*Enforcing Planning Control: Good Practice Guide for Local Planning Authorities*', published in 1997 by the Department of Environment, Transport and the Regions, strongly advocates the production of an enforcement policy, stating that an assessment in relation to whether enforcement action should be taken "is made more difficult if the authority have not produced a clear statement of enforcement policy to provide a decision-making framework". Such a framework is considered essential due to the somewhat complex nature of enforcement

¹ See also the Town and Country Planning (Prescription of County Matters) Regulations 1980 (No. 2010)

provisions made available to the County Council through the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). The potential for greater complexity has arisen with the advent of the Human Rights Act 1998, as well as other legislation such as the Police and Criminal Evidence Act 1984 and the Regulation of Investigatory Powers Act 2000. These considerations have also led to procedural requirements that need be followed by the County Council in taking enforcement action.

3.3 Enforcement standards and a code of practice are also considered necessary as the taking of formal enforcement action is always at the discretion of the local planning authority. Justifications therefore have to be made supporting the County Council's chosen course of action.

3.4 In producing this code of practice, reference has been made of the following:

- *Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991);*
- *Planning Policy Guidance Note 18: Enforcing Planning Control (December 1991);*
- *Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' (DoE 1997);*
- *Enforcing Planning Control: Good Practice Guide for Local Planning Authorities (DETR 1997);*
- *Good Practice Guide on Monitoring Minerals and Waste Management Sites (Planning Officers' Society 1998).*

It is recommended that all planning and enforcement practitioners make reference to these documents and legislation in conjunction with this document.

4. Breaches of Planning Control in Hertfordshire

4.1 The County Council deals with a diverse range of planning matters that differ widely in nature and scale. It is fair to say, however, that breaches of planning control that relate to minerals development tend to differ from those associated with waste management and disposal developments.

4.2 There are three types of breach which generally occur:

- breach of a condition attached to an extant planning permission;
- the carrying out of development where there is no planning permission and such a permission is unlikely to be granted;
- the carrying out of development where there is no planning permission but permission is likely to be granted retrospectively.

Minerals developments

- 4.3 The main minerals extracted within Hertfordshire comprise sand and gravel. Extraction sites tend to occur within the county's 'sand and gravel belt', predominantly located within the southern half of the county running from Rickmansworth in the south west to Hertford and its rural area to the east. The sand and gravel belt rarely goes further north than Welwyn Garden City and Hertford. Four active chalk quarries are also located within Hertfordshire, with two of these being situated in the north of the county. Brickclay is extracted from a site near Bovington in the west of the county.
- 4.4 Mineral extraction sites are predominantly large in scale and situated within the county's rural areas. Due to the scale of these sites, mineral extraction tends to be carried out by the larger operators. Accordingly, where breaches of planning control are identified, these usually relate to breaches of conditions contained within extant planning permissions. It is unusual, although not unknown, for unauthorised mineral extraction to take place within the county.

Waste Developments

- 4.5 Historically, waste disposal sites have been associated with those sites used for quarrying minerals, with waste being used for infill and restoration. Waste recycling facilities, however, are primarily located within industrial areas close to urban settlements throughout the county, or at active quarries.
- 4.6 The advent of the landfill tax in 1996 has resulted in the diversion of a large volume of the inert waste stream away from landfill sites to developments deemed exempt from the tax. These have tended to include the recontouring of golf courses, the creation of landscaping bunds and the use of waste for landraising for agricultural improvement. This has led to an abuse of the system in certain areas with excess waste being tipped on sites and developments not being carried out in line with the planning permission. The landfill tax has also resulted in waste disposal taking place on sites that do not have the benefit of planning permission as a way of avoiding payment of the tax. Due to the county's close proximity to London, and due to considerable development taking place within the urban areas around Watford, such developments are more liable to be located in the south of Hertfordshire, usually close to the M25, M1 and A1(M) motorways.

5. Powers Available to the County Council in Undertaking Its Enforcement Function

- 5.1 There are a number of powers available to the County Council when it considers taking enforcement action, many of which were introduced by the Planning and Compensation Act 1991. These are described within this document in order to explain the extent of the County Council's powers and to identify which course of action is likely to be most appropriate.

Right to enter land

- 5.2 All officers, or other persons duly authorised in writing by the County Council, may at any reasonable hour enter any land to ascertain whether there has been a breach of planning control, in accordance with Section 196A of the Town and Country Planning Act 1990. Any person that wilfully obstructs an authorised person in carrying out these duties is committing an offence, punishable on summary conviction to a fine currently not exceeding £1,000.
- 5.3 In addition to this, Section 324 of the Act conveys a right of entry to any person duly authorised in writing by the County Council for the purposes of surveying land in connection with any proposal to issue or serve any notice.
- 5.4 Where authorised persons are prevented from entering land for this purpose, normal practice is for a solicitor's letter to be sent to the person guilty of the obstruction. This sets out the offence being committed, and warns that person that any further obstruction will result in the County Council instigating prosecution proceedings. Where there is a continual obstruction, however, the County Council may apply to the court to obtain a warrant to enter the land in question. This should not preclude the taking of prosecution proceedings in relation to the original obstruction.

Planning Contravention Notice

- 5.5 A Planning Contravention Notice (PCN) is served in order to ask specific questions in relation to a suspected breach of planning control. This enables a decision to be made regarding whether formal enforcement action should be taken. There is a legal requirement to respond to a PCN within 21 days of the date of the notice. The service of a PCN is optional and does not have any bearing on other action taken by the local planning authority. It is especially useful when trying to identify all parties who have an interest in land or have been involved in a suspected breach of planning control.
- 5.6 Non-compliance with the requirements of a PCN is an offence punishable by a maximum fine of £1,000. Knowingly providing false or misleading statements in response to a PCN is also an offence, punishable by a maximum fine of £5,000.

Enforcement Notice

- 5.7 The local planning authority can issue an Enforcement Notice where there has been an identified breach of planning control and where it is considered expedient to issue such a notice. The Enforcement Notice will define the breach and set out prescriptive steps for compliance, with specific timescales, for remedying the breach. A notice can be served in respect of operational development, a material change in use of land, or where there has been a breach of a condition attached to an extant planning permission. Such a notice must be served on the owners, occupiers and all other parties with an interest in the land that is materially affected by the service of the notice.
- 5.8 An Enforcement Notice must come into effect not less than 28 days after its date of issue. There is a right of appeal to the Planning Inspectorate, and such an

appeal must be made before the notice comes into effect. Where an appeal is submitted, the requirements of the notice are held in abeyance until the appeal has been decided.

- 5.9 Failure to comply with the requirements of an Enforcement Notice is a criminal offence which is liable, on summary conviction, to a fine not exceeding £20,000 per offence, or on conviction on indictment to an unlimited fine.

Stop Notice

- 5.10 A Stop Notice can only be served with an Enforcement Notice, although the latter can be served on its own. The service of a Stop Notice is essential where the local planning authority considers it expedient to stop an activity before the associated Enforcement Notice comes into effect. Consequently, a Stop Notice would come into effect within three days of the date of service, unless special considerations are attached to the notice indicating that it should come into effect immediately.

- 5.11 There is no right of appeal against a Stop Notice. An appeal against an Enforcement Notice will hold the requirements of that notice in abeyance, but the requirements of the Stop Notice to cease a particular activity remain effective. However, because a Stop Notice is preventing an activity from continuing, there is a risk that a claim for compensation could be made against the local planning authority. It is therefore essential that a cost/benefit assessment be carried out to identify such a risk prior to the service of the notice.

- 5.12 When serving a Stop Notice the local planning authority should also place a site notice on the land advising others of the presence of a Stop Notice. Where this takes place, the County Council will ensure the removal of the site notice once the Enforcement Notice comes into effect to prevent the accumulation of unsightly notices.

- 5.13 Non-compliance with the requirements of a Stop Notice is an offence, punishable by a maximum fine on summary conviction of £20,000 and, on conviction on indictment, to an unlimited fine.

Breach of Condition Notice

- 5.14 A Breach of Condition Notice (BCN) may be served where there has been a breach of a condition that is attached to an extant planning permission. There is no right of appeal against the service of such a notice, although it can be challenged by way of applying to the High Court for judicial review. A BCN is regarded as being an alternative to serving an Enforcement Notice, although it can also be served in conjunction with an Enforcement Notice. This may assist where the local planning authority considers it expedient to stop a breach quickly before any appeal against an Enforcement Notice is determined. As such, it can also be viewed as being an alternative to a Stop Notice in such a situation. Normally, however, a BCN is served on its own where there is an identifiable breach of a planning condition. The BCN will set out the necessary remedial action to ensure compliance with the condition being breached, with a minimum period of 28 days for compliance.

- 5.15 There are advantages and disadvantages to serving a BCN over an Enforcement Notice, and these are set out in detail within '*Enforcing Planning Control: Good Practice Guide for Local Planning Authorities*'. The penalty for breaching the requirements of a BCN is a maximum fine on conviction of £1,000.

Injunctive Action

- 5.16 Where the local planning authority deems it expedient to restrain any actual or apprehended breach of planning control it may apply to the High Court or the County Court for an injunction. Such an application can be made whether or not the local planning authority has exercised, or proposes to exercise, any of its powers to enforce planning control. The taking of such action is not to be taken lightly, but is critical where ordinary enforcement powers are unlikely to stop unauthorised activities.
- 5.17 Failure to comply with the terms of an injunction is in contempt of court. The court has discretion to imprison anyone found to be in contempt, or to administer an unlimited fine.

6. Procedure for Investigating Potential Breaches of Planning Control

- 6.1 Potential breaches of planning control are likely to come to the Unit's attention in a number of ways and these can be summarised as follows:
- through routine site monitoring inspections;
 - as a complaint from a member of the public or other third parties;
 - as a complaint from a rival operator; and,
 - based on the knowledge of particular operators and working practices.
- 6.2 In order for the County Council to demonstrate an efficient and effective investigative practice within the resources available this Code of Practice sets out the procedures for carrying out regular site inspections of operational sites, to enable the early identification of potential breaches of planning control and how complaints relating to sites will be investigated .

Site Monitoring Procedure

- 6.3 Minerals and waste developments tend to be operational continuing, in certain circumstances, for a number of years. They also tend to move gradually over land throughout the period of their operation. Due to the nature and scale of these developments, they can have a substantial and permanent impact on the landscape. Accordingly, such operations need to be closely controlled through continual monitoring by officers.
- 6.4 The County Council has adopted a regime whereby the monitoring of active minerals and waste sites is carried out in an efficient and effective manner within the resources available. This will enable the Council's enforcement function to take on a more proactive rather than reactive role, as breaches of planning control on such sites will be identified sooner. Remedial action should therefore be easier

to achieve as breaches will not have reached the 'point of no return'. This is particularly important in terms of the Human Rights Act 1998, where the County Council may be challenged if it has allowed particular breaches of planning control to continue which adversely affect third parties with reference to Article 8 and Article 1 of the First Protocol of the Act (as set out in Appendix A).

6.5 In order that site monitoring is carried out in an effective and efficient manner, the County Council has adopted the following guidelines:

- When on site, officers shall make themselves known to the manager of the site, when available, or to other appropriate site employees. The nature of the visit shall be made known at the outset. This is in line with the commitments set out in the Enforcement Concordat.
- The safety of officers is paramount. Appropriate protective clothing shall be worn at all times. Where there is a risk of violence to staff, officers should not make solo site visits. Where vacant sites are to be visited, staff shall notify others of their whereabouts prior to the visit and, where appropriate, check in with the CRISYS telephone system, which is an automated service allowing checks to be made in respect of officers' safety and whereabouts.
- Notes shall be made at the time of visit, where this is appropriate, or as soon as possible after the visit has been completed. It is essential that contemporaneous notes be made where formal enforcement action is being considered or where the County Council is considering taking further action in response to a subsequent breach of enforcement action.
- Liaison shall take place with the appropriate case officer to assess the situation on sites that they are responsible for.
- A record of all visits carried out shall be logged onto the Sites Monitoring Management System (SiMMS) database, with a brief description of the visit, to allow reports to be generated as to the number of visits undertaken. This information will form part of the Annual Report to be published by the Unit, as outlined in Section 10.0.
- A copy of the appropriate Site Visit Record shall be kept on the operational file for future reference.

6.6 The frequency of site visits for each site is input on SiMMS, allowing reports to be generated identifying when particular sites are to be inspected. To make this more accountable, the County Council has adopted a procedure whereby the site visit frequency shall be based upon environmental considerations, the nature of the development, the history of the site and the past record of the operator. As such, it is anticipated that this will allow monitoring to complement that of the Environment Agency. The system for monitoring active sites adopted by the County Council is set out in Table 1.

6.7 The site visit frequency should be set with reference to the above criteria and should be constantly reviewed, determining exactly how many visits a site should be subject to. It is the responsibility of the Site Monitoring & Enforcement Manager to update this information in light of situations changing on site. For instance, certain sites may be subject to more visits if there has been a particular

problem, or the scaling down of operations on site will mean that less visits are to be made.

TABLE 1: SYSTEM FOR MONITORING ACTIVE SITES WITHIN HERTFORDSHIRE²

CONSIDERATIONS	VISIT FREQUENCY
Site located within or adjacent to Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty and National Nature Reserves or wildlife site etc; Nature of development has potential to cause pollution/serious affects on the environment; Nature of development is likely to adversely affect third parties and/or has generated a large number of complaints; Site has history of prolonged enforcement action; Operator has history of prolonged enforcement action.	12-24 visits a year
Nature of development may give rise to the possibility of pollution/adverse affects on the environment; Potential for development to adversely affect third parties; Site has history of enforcement action; Operator has history of enforcement action.	8-12 visits a year
Minimal potential for pollution/adverse affects on the environment. Third parties unlikely to be affected (although complaints may have been received); No history of enforcement action.	2-4 visits a year
Site temporarily inactive. Site in restoration.	1-2 visits a year

6.8 It should also be noted that the SiMMS system currently only deals with those sites that have, at some time, had a planning application submitted in their respect. Sites where there has been a breach of planning control, but where there has never been a planning application made, will be subject to very tight scrutiny involving regular site inspections, which will not be able to be recorded on SiMMS. To enable sites without planning permission to be recorded and evaluated, a central log of these will be kept and maintained, allowing these sites to be counted and referred to within the Annual Report.

² Within the current level of resources (2002-3) frequencies are likely to be at the lower end of the scale unless expediency requires otherwise.

Complaints procedure

- 6.9 In the first instance it is important to define what is viewed as a complaint. In this context, a complaint is a notification to the County Council of a potential breach of planning control. In other words, it is a complaint about a particular activity or operation at a site.
- 6.10 Every complaint received by the County Development Unit will be logged onto the SiMMS system so that a permanent record is kept. This will enable officers to ensure that all complaints are followed up and action taken as appropriate. It will also enable officers to ensure that all complainants are kept informed of the outcome of their complaint, where this is deemed appropriate. The logging of complaints onto SiMMS also allows the generation of reports based on the number of complaints received in any one 12 month period, which will form one aspect of an Annual Report.
- 6.11 Complaints to the County Council are normally received from members of the public, usually residents local to a particular site. Complaints may also be received from the Environment Agency, District and Parish Councils, other operators and other Units within the Environment Department (e.g. Countryside Access, Highways). The following procedure seeks to ensure that all complaints are dealt with effectively and expediently. Consequently, the following guidelines shall be followed:
- All complaints received by members of the public and other operators shall be treated on a confidential basis unless the complainant gives express authorisation.
 - In the case of complaints received by letter, fax or e-mail a written response shall be provided to the complainant within three working days of receipt, in line with the Environment Department's Chartermark standards. Where a full response cannot be given within this timescale, a holding response will be sent out with a timescale for a full response.
 - Where a complaint is received by telephone, there is usually no need for a written response to the complainant. Where appropriate, however, the complainant shall be kept informed of the Unit's actions within three days of the date of the original telephone call. Likewise, a holding response shall be given where a full response cannot be given within this timescale.
 - All complaints will be investigated by the carrying out of a site inspection, where this is considered appropriate. There will be times, however, where a complaint can be readily resolved with reference to the extant planning permission or by telephoning the operator in question to gather further information. The investigating officer's expertise and judgement will dictate what course of action is most appropriate in this instance.
- 6.12 All complaints will be investigated in line with standard response times based on the potential seriousness of the alleged breach of planning control. This will obviously depend upon available resources to allow a full investigation to take place. The standard response times are outlined in Table 2.

6.13 The decision as to the potential seriousness of an alleged breach of planning control ultimately lies with the Site Monitoring and Enforcement Manager. In considering this it is imperative that liaison takes place with the Environment Agency, District Councils and other interested parties, where appropriate, to enable a complete picture to be formed.

TABLE 2: STANDARD RESPONSE TIMES FOR INVESTIGATING POTENTIAL BREACHES OF PLANNING CONTROL

FACTORS DETERMINING POTENTIAL SERIOUSNESS	RESPONSE TIME	CLASS OF BREACH
Large scale activities that may potentially cause irreparable harm to the environment, especially Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty and National Nature Reserves, (e.g. the deposit of large amounts of waste); Serious disturbance to third parties; Activities being carried out without planning permission where the granting of such a permission is seriously unlikely; Activities being carried out by operators with a track record of flouting planning control.	As soon as possible (and at least within 2 working days)	Class A
Activities that have the potential to seriously harm the environment; Activities causing some disturbance and loss of amenity to third parties; Smaller scale activities being carried out without planning permission, that are ongoing, where permission is unlikely to be granted.	Within 3 working days	Class B
Minor breaches of condition; Activities causing minimal disturbance to third parties; Activities carried out without planning permission which are unlikely to receive planning permission, where the activity has ceased. Activities where it is foreseen that planning permission may be granted retrospectively.	3-10 working days	Class C

7. The protocol for taking formal enforcement action

7.1 Although the County Council has the overall responsibility for taking enforcement action relating to county matters, this is a discretionary power as the Town and Country Planning Act 1990 does not impose a general duty to ensure compliance with planning control. Because of the discretionary nature of enforcement, there is a general need for procedures to be followed and adopted to

ensure that the County Council's approach is consistent and that it is accountable to others when deciding what action, if any, should be taken. In terms of the Human Rights Act 1998, any enforcement action must be proportionate to what it seeks to achieve and it must also be lawful (i.e. whether or not it complies with the requirements of the Town and Country Planning Act).

- 7.2 The County Council needs to demonstrate that its actions are speedy and robust as any inaction or under-enforcement may be challenged by third parties adversely where there is a clear breach of planning control. Likewise, any inaction could result in a complaint to the Local Government Ombudsman. In order to justify its actions in response to any breach of planning control, the investigating officer should complete the internal proforma *The County Council's Justifications for its Actions in Relation to Breaches of Planning Control*, a copy of which is attached at Appendix B. This will enable the Unit to demonstrate that all factors have been considered in its decision as to whether to take enforcement action or not.
- 7.3 A flowchart is attached as Appendix C to this document, outlining the general progression of a typical enforcement investigation. This acts as an aid for investigating officers in undertaking their duties.

Initial investigations

- 7.4 In determining whether a breach of planning control has taken place as a matter of fact, the investigating officer will need to make thorough notes of the suspected breach. The use of photographs will assist in enabling a full record of the site inspection to be kept, and will also be relevant if there is any subsequent appeal of the enforcement action. Reference will need to be made to any extant planning permissions (where they exist) as well as the current General Permitted Development Order to ascertain if the development has permitted development rights. Liaison with the appropriate District Council will determine if any planning other permissions have been granted. Reference will also need to be made to the Development Plan, including the Structure Plan, relevant District Plans and the Minerals and/or Waste Local Plan to determine what policies may be relevant to the site and development in question.

First stage of any action

- 7.5 Under the Town and Country Planning Act 1990, it is **not** an offence to carry out development without first obtaining planning permission. Upon concluding that there has been a breach of planning control, the investigating officer needs to make a judgement as to whether or not planning permission is required and if so whether it is likely to be granted for the development in question. The class of breach should be assessed based on the criteria set out in Table 2 in the previous Section, which will enable the investigating officer to prioritise the case, taking enforcement action as appropriate. Reference to these classes in respect of an investigation should be made at all times in order that the matter is progressed expediently, with a common sense approach prevailing.
- 7.6 In accordance with guidance set out within PPG18, negotiation should always be the first step in addressing the situation. Where a landowner or operator is willing to comply with the recommendations of the investigating officer, and the

investigating officer is confident that such recommendations are likely to be carried through, this will usually result in formal enforcement action not being required. If remedial action to address a breach of planning control needs to be taken, the investigating officer will write to all parties involved, explicitly setting out what is required to correct the situation, and advising of the consequences that a failure to carry this out could result in formal enforcement action being taken. A timescale should always be set for the completion of these works. Confirmation should then be required from the parties in question indicating that they are willing to carry these works out in the set time period. If works do not progress, or a commitment is not received to carry out the necessary remedial works, the investigating officer should then consider taking formal enforcement action to remedy the breach. In allowing remedial works to be carried out without taking enforcement action, it should be noted that it is at the investigating officer's discretion to what extent these works should consist. For example, there may be an instance where to insist on carrying out all works necessary to return the land to its original condition is unreasonable or would have a detrimental financial impact on a company or individual. In all cases, remedial action should be proportionate and in the public interest.

- 7.7 In certain circumstances it will be appropriate to seek the submission of a planning application where the investigating officer is of the view that the granting of planning permission would enable the County Council to control the development through the imposition of conditions. In such situations, those responsible for the unlawful development will be invited to submit a planning application. If such an application is not forthcoming, the County Council may then decide to take formal enforcement action to secure its position, although invariably this will be result in an appeal. PPG18 states that enforcement action should not be taken just as a means to regularise a situation, however the County Council may require the imposition of conditions to control the development concerned.
- 7.8 In order to ascertain answers to specific questions relating to the potential breach of planning control, it is advisable that a Planning Contravention Notice (PCN) be issued to all of those parties identified through routine investigations. In issuing a PCN, the County Council has not taken any enforcement action, although it is an offence to not reply, or to provide false information, to a PCN. The service of a PCN can therefore be seen as being a pre-cursor to the taking of formal enforcement action and allows officers to identify all parties that have an interest in the land so that it is aware of all of the parties on which to serve any subsequent notice.
- 7.9 It is also advisable to serve a PCN where the only information required relates to identifying who has an interest in the land. It may also be necessary to carry out a land search of a site in order to see who has a registered interest in the land in question. PCNs are reasonably straightforward in their preparation and, where required, they should be issued as soon as possible after a potential breach has been identified due to the 21 days in which responses have to be sent back. Once signed they should be sent out, first class registered delivery, with an accompanying letter detailing the potential breach of planning control. A copy of

each PCN should also be placed in the PCN register kept within the County Development Unit, for future reference.

Second stage – taking of enforcement action

- 7.10 If it is decided that the taking of formal enforcement action is the only viable solution to remedy a breach of planning control, the following procedure should be followed. This is in order that the County Council is consistent in its approach when taking enforcement action.
- 7.11 The response to a PCN may provide the investigating officer with the justification to take formal enforcement action, although a decision may have been taken in the absence of such a reply. However, in considering the next step, the investigating officer must make a sound judgement as to whether the taking of formal enforcement action is expedient and is in the public interest.
- 7.12 Close links exist with the County Secretary's Department, and this is in accordance with advice contained within PPG18. As previously detailed, there are a range of notices that are available to the County Council when considering taking formal enforcement action and the decision as to what route to take should be made with liaison with solicitors. The drafting of the individual notice is the responsibility of the investigating officer, and this is again carried out with close liaison with solicitors. As notices are generally issued under officer delegation the relevant elected members should be kept informed. This includes (*inter alia*) the Chairman of the Development Control Committee and the local member(s). (See also paragraphs 7.15-16 below.).
- 7.13 All notices should be sent out first class registered delivery. They should also be kept on the Enforcement register kept within the County Development Unit for future reference, and their details entered on to the SiMMS system. Furthermore, copies of all notices except PCNs should be sent to the appropriate District Council so that they can be put on the Public Register of Enforcement Notices.
- 7.14 Where enforcement action involves the serving of a Stop Notice, the County Council could be liable for a claim for compensation if a particular activity has been stopped to the financial detriment of the recipients. In order to justify the service of such a notice, the investigating officer should complete a cost/benefit assessment prior to the service of the notice to demonstrate that the enforcement action is necessary and proportionate to what it is seeking to achieve. The service of a Stop Notice should not be prevented where it is demonstrated, through the cost/benefit assessment, that the County Council considers that the benefits of serving the notice clearly outweigh the costs to the operator or landowner of taking this action.

Notification of members

- 7.15 As most enforcement action is taken under officer delegated authority, elected members may be unaware of certain issues taking place within their constituencies. It is essential, therefore, that members are notified of any enforcement action taken in their constituency by way of a briefing note, with a copy provided to the Chairman, Vice-Chairman and other Spokesmen on the

Development Control Committee. Where possible, members will be briefed prior to the taking of any formal enforcement action although, due to the somewhat urgent nature of such action, this may not always be possible.

- 7.16 In addition, members may be aware of enforcement concerns within their constituencies through liaising with constituents or being advised of matters of concern by the appropriate Parish Council. This reiterates the need for officers to keep members informed of developments at all stages of the process to ensure that they can answer questions raised by third parties.

Publicity of enforcement action

- 7.17 Where there has been a severe breach of planning control which the County Council has sought to address through taking formal enforcement action, such action should be publicised in the local newspaper by way of a press release where it is considered appropriate to do so. This will predominantly be where the issues concerned are of sufficient local interest to merit publicity. Such publicity may also act as a deterrent to others. This should also allow better policing of a site to ensure that breaches of the enforcement action do not occur, by helping members of the public to be aware of the issues involved. Any press release should be agreed with the County Secretary to ensure that the County Council's legal position is not prejudiced.

8. Further action in response to breaches of formal enforcement action

- 8.1 Where a breach of planning control continues in breach of enforcement action, the County Council will take the required subsequent action in the form of prosecution proceedings and obtaining injunctions, where appropriate. The Council will continue to pursue such means to ensure that breaches of enforcement action do not occur. In deciding what action is appropriate, officers will have regard to the breach, the quality of evidence and take advice from solicitors in the County Secretary's Department. This course of action may result in obtaining advice from Counsel.

The collection of evidence

- 8.2 In collecting evidence to substantiate the taking of further action, there may be the need for covert surveillance to be carried out. In doing this, officers should not risk their own safety. Surveillance operatives have successfully carried out this work on behalf of the Council in the past, and it is recommended that this continues, resources permitting. Ultimately, the cost of employing such operatives will be claimed if Court action is successful. In instructing surveillance operatives, authorisation must be granted for entry to land under Section 196A of the Town and Country Planning Act. Authorisation must also be granted for covert surveillance carried out on behalf of, or by officers of, the County Council in relation to the Regulation of Investigatory Powers Act 2000 (RIPA). Surveillance carried out must be authorised in advance by an Authorising Officer, (currently the Team Leader: Development Control or more senior officers), to ensure that the provisions of RIPA are adhered to.

- 8.3 As previously detailed, contemporaneous notes must be made when there is a breach of enforcement action to ensure that the Council's evidence is admissible in Court. Photographs (not digital) and video evidence are essential, where appropriate, in building a case to take to Court.
- 8.4 Investigating officers should also make use of the provisions of the Police and Criminal Evidence Act 1984 (PACE), which allows the interviewing under caution of suspects believed to have committed an offence. Interviews under caution, in accordance with PACE, can be conducted 'in the field' or can be tape recorded in the Council's offices.

Publicising successful action

- 8.75 Where the County Council is successful in taking further action, it should publicise any convictions obtained in the appropriate local newspaper. A press release should also be sent to either "*Waste Planning*" or "*Minerals Planning*" as appropriate. This will demonstrate that the County Council will not hesitate in taking such action and should act as a deterrent to other operators.

9. Liaison with other bodies

- 9.1 In carrying out its duties as the local planning authority dealing with minerals and waste developments, officers of the County Council regularly liaise with officers of the Environment Agency. Environment Agency officers generally carry out inspections of many the same sites to ensure compliance with the Environmental Protection Act 1995, as they have responsibility for pollution control as well as issuing, and ensuring compliance with, waste management licences. It is standard procedure, therefore, that information be shared between the County Council and the Environment Agency in order that breaches of the appropriate legislation can be addressed. This should avoid the duplication of effort and is endorsed by "Good Practice Guide on Monitoring Minerals and Waste Management Sites". To these ends, liaison meetings between officers of the two authorities should take place on a regular basis to highlight areas of concern. It is essential that close ties are maintained with the Environment Agency in order that this liaison flourishes and, consequently, that these liaison meetings continue to take place on a regular basis.
- 9.2 Liaison also takes place between enforcement officers employed by the ten district council authorities and the County Council, by way of a quarterly liaison meeting conducted via the Hertfordshire Technical Chief Officers Association (HTCOA). This allows the sharing of knowledge and information between officers, as well as developments in the field of enforcement. This meeting also allows contacts to be made with other enforcement officers in the district authorities, all of whom tend to have some contact with the County Council in relation to enforcement matters taking place within their areas. It is essential, therefore, that enforcement officers continue to attend this meeting to allow close ties to continue with the district authorities.

10. Production of an Annual Report

- 10.1 The Annual Report enables closer scrutiny of the Unit's site monitoring and enforcement function. The report will be published in September of each year for the previous twelve-month period from April to March. The report will include the number of inspections undertaken and the number of formal notices and PCNs issued by the Unit. It is anticipated that the number of breaches of planning control dealt with and the number of complaints received will form a picture of current and future trends, and will allow the allocation of resources for the future.
- 10.2 The Annual Report will also include a commentary from the Site Monitoring & Enforcement Manager detailing the workload over the preceding 12 months, and the oncoming challenges to the enforcement and site monitoring function..
- 10.3 In order to publicise the work of the County Council's enforcement function farther afield, a brief commentary will be sent to "*Waste Planning*" and "*Minerals Planning*".

APPENDIX A

RIGHTS CONVEYED UNDER THE HUMAN RIGHTS ACT 1998

Article 8: Right to respect for private and family life

- Everyone has the right to respect for his private and family life, his home and his correspondence.
- There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1 of the First Protocol: Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

APPENDIX B

**THE COUNTY COUNCIL'S JUSTIFICATIONS FOR ITS ACTIONS IN
RELATION TO BREACHES OF PLANNING CONTROL**

Site:	Ref:
Description of Potential Breach:	
Is Enforcement Action Proposed:	
Proposed Action (if any):	
<p>COMPATIBILITY WITH THE HUMAN RIGHTS ACT 1998</p> <p>Is the potential breach causing a nuisance to neighbouring properties (who could make a claim that their Human Rights are being affected)?</p> <p>Is the potential breach affecting local amenity?</p> <p>Is the proposed enforcement action lawful?</p> <p>Is the proposed enforcement action necessary and is it pursuing a legitimate aim (e.g. the rights of others)?</p> <p>Is the proposed enforcement action proportionate to the breach?</p>	
Justification for Taking/Not Taking Enforcement Action (if action includes serving a Stop Notice ensure a Cost Benefit Analysis is included on a separate sheet):	
Conclusion:	
Signed:	Dated:

APPENDIX C

**FLOWCHART SHOWING THE PROCEDURE TO BE FOLLOWED IN
UNDERTAKING A TYPICAL ENFORCEMENT INVESTIGATION**

