

Buckinghamshire County Council

Buckinghamshire Local Monitoring and Enforcement Plan

November 2019



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1. Introduction

- 1.1 The Local Monitoring and Enforcement Plan (LMEP) sets out the planning enforcement and monitoring strategy of Buckinghamshire County Council as the County Planning Authority; outlining the overarching aims and objectives as well as the investigatory approach of the County Planning Enforcement function.
- 1.2 The LMEP exists not only to inform the principle operation of the County Planning Enforcement function but also acts to assist the public and partner agencies/authorities in understanding the role of planning enforcement.

2. Background

- 2.1 Planning enforcement is an integral part of the planning process; underpinning the plan-making and development management processes to ensure development is implemented in accordance with the relevant spatial strategy.
- 2.2 The National Planning Policy Framework states that local planning authorities 'should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area.
- 2.3 The planning enforcement function is supported by a vast array of informal and formal enforcement tools , primarily set out within the principle legislation at the heart of the town planning process; Town and Country Planning Act 1990 (as amended)¹.
- 2.4 There is no statutory requirement to investigate or take action against breaches of planning control. The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment/public amenity and secure compliance with planning regulations. The aim is to overcome harm, initially through negotiations.
- 2.5 In the preparation of this plan, significant regard has been given to the relevant Development Plan Document; Buckinghamshire and Minerals Waste Local Plan (BMWLP). Of particular relevance to this plan is Policy 28 of the BMWLP, where the role of the LMEP is established;

'The Local Monitoring and Enforcement Plan set out the council's strategy for pursuing planning compliance in Buckinghamshire and the approach that the council will take in investigating and remedying breaches of planning control.'

¹ Town and Country Planning Act 1990 c. 8

3. County Planning Enforcement

- 3.1 The County Planning Authority in Buckinghamshire is *Buckinghamshire County Council* who is responsible for determining planning applications that are sometimes referred to as 'County Matters' (for which we are the Local Planning Authority).
- 3.2 County Matters are defined within relevant legislation², but generally refer to:
- Waste sites
 - Mines
 - Movement of aggregate by rail
 - Quarries/Mineral Extraction
 - Landfill and land raising using waste
 - Importation, deposition of waste materials
 - The County Council's own development (Schools, Libraries etc), known as Regulation 3 Development³
- 3.3 The County Planning Authority determines planning applications, monitors sites with planning permission and investigates alleged breaches of planning control in relation to County Matters.

4. Breaches of Planning Control

- 4.1 A breach of planning control occurs where;
- A condition or approved plan on a planning permission issued by the Council is not adhered to or;
 - Development has occurred or there has been a change of use of land without the benefit of planning permission.
- 4.2 Development' is defined in s55 of the Town and Country Planning Act 1990 (as amended)⁴ and it states that development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

² The Town and Country Planning (Prescription of County Matters) (England) Regulations (2003) 2003 No. 1033

³ The Town and Country Planning General Regulations (1992)1992 No.1492

⁴ *Town and Country Planning Act 1990* c. 8

- 4.3 Development can be undertaken in the form of operational development and material changes of use of land:

Operational Development means: Activities which result in some physical alteration to the land itself (*e.g. erection of a building or structure*)

Material change of use means: Material changes of use which do not interfere with the actual physical characteristics of land (*e.g. a change of use of land from agriculture to use for waste disposal*)

5. Enforcement Aims

- 5.1 The County Planning Authority Enforcement aims are:

- To effectively and efficiently remedy the undesirable effects of breaches of planning control by working with Landowners, Operators, Councillors, Partner Agencies and the general public;
- To bring unauthorised activity under control, in a timely manner, to ensure that the credibility of the planning system is not undermined; and
- To ensure the delivery of appropriate and high-quality development enabled through the development management process.

6. Enforcement Objectives

- 6.1 In order to meet the Enforcement Aims, County Planning Authority will:

- Investigate complaints pertaining to breaches of County Matter planning control;
- Where resources allow, officers will proactively monitor consented sites regularly to verify compliance with conditions attached to consents and seek compliance with conditions which are being breached;
- Consider the expediency of taking enforcement action and will, if it is considered necessary, take enforcement action when it is essential to protect the amenity (pleasantness of a place), public or highway safety, and the integrity of the planning process;

- Decide on the most expedient course of action to remedy breaches of planning control
- Keep complainants and Councillors informed of progress throughout the processes of investigating and taking action on breaches of planning control, if requested to do so;
- Only take formal enforcement action, or require remedial action, which is commensurate to the breach;
- Set reasonable but firm deadlines for actions required to resolve breaches of planning control, and make these clear to all parties concerned;
- Invite a retrospective application to regularise a breach where there is a reasonable prospect that planning permission would be granted (notwithstanding the rights of an alleged offender to submit such an application);
- Facilitate appropriate development that conforms to planning policy, and try to secure the best possible development retrospectively where suitable; and
- Proactively work and cooperate with other regulating authorities and agencies to resolve breaches of planning or other legislation, share intelligence, and reduce crime.

7. How to report an alleged breach of planning control

- 7.1 In order to ensure that members of the public can report possible breaches of planning control the Council has put the following methods of contact in place;

Online at: www.buckscc.gov.uk

Via telephone on 01296 395000

Dedicated mailbox: planningenforcement@buckscc.gov.uk

- 7.2 The information we receive is processed and held in line with our GDPR policy and remains confidential. The County Planning Authority may share your personal information with partner agencies such as Environment Agency, District Councils and Thames Valley Police. For full information on Buckinghamshire County Council's privacy policy please see the link below:

<https://intranet.buckscc.gov.uk/how-do-i/corporate/general-data-protection-regulation/policies-and-guidance/privacy-statement/>

8. Commonly used terms explained

- 8.1 If you experience dealings with the County Planning Authority, you may hear words used such as: discretionary, proportionate and expedient. These are explained below:

Discretionary

- 8.2 The planning system prescribes that the County Planning Authority must investigate all alleged breaches of planning control. However, it does not prescribe that it must take enforcement action. This means that enforcement action is discretionary – the County Planning Authority may decide (with reason) that enforcement action will not be taken in some cases. A formal report will be written to explain the reasons for taking no action in these circumstances.

Proportionate

- 8.3 Any action taken by the County Planning Authority must be carefully considered and the County Planning Authority must ensure that the action is in the public interest. It must also ensure that the action is proportionate to the alleged breach – for instance, it may not consider that seeking an injunction in response to an alleged breach of a stockpile height condition is a proportionate action.

Expedient

- 8.4 When weighing up whether action is proportionate, the County Planning Authority will also make sure the action is reasonable in all other respects; in the public interest and will achieve a satisfactory result. The County Planning Authority will write a report which is known as an Expediency Report and this report will discuss all of the options and material matters in detail. The term expediency in planning enforcement relates to the 'argument' for taking action (taking in to consideration all the material factors).
- 8.5 Enforcement action is decided through the investigation stages and will result in a report being written by the investigating officer. The officer will take into account all the evidence, the proportionality and expediency of any proposed action and will present the report to a Senior Manager.

9. Investigatory Process

- 9.1 The County Planning Authority does not condone breaches of planning control it must follow government guidance in dealing with such matters. Government advice in the NPPF states the 'Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.' The Planning Act specifically allows for retrospective

planning permission to be sought and granted.

- 9.2 Government advice on enforcing planning controls is also provided within the Planning Practice Guidance.
- 9.3 Enforcement action is discretionary and Section 172 of the Town and Country Planning Act 1990⁵ states that the Local Planning Authority may only issue an enforcement notice where it appears to them that:
- There is a breach of planning control; and,
 - It is expedient to issue the notice having regards to the provisions of the development plan and to any other material considerations.
- 9.4 The Local Planning Authority must therefore be seen to exercise discretion in terms of pursuing enforcement action and our actions have to be seen to be both reasonable and proportionate. In essence therefore, in the absence of significant planning harm - such as where the development complies with the policies of the development plan - or more precisely any “expediency” to enforce, the Authority should not take any further action.
- 9.5 Once a breach report is received by the County Planning Authority, an officer will open a case. Following the formal opening of the case, officers will commence a desktop investigation and begin collection information about the site in question; landowner/operator, planning history, land designations etc.
- 9.6 It should however be noted that enforcement action can only be taken within certain time limits:
- Four Year Rule: If “operational development” (i.e. building, engineering, mining or other operations) or unauthorised use of a premises as a single dwelling house can be shown to have occurred over 4 years ago it is immune from enforcement action.
 - Ten Year Rule: If any “material change of use” of land or buildings (except use as a dwelling house), or a breach of a planning condition can be shown to have occurred over 10 years ago they are immune from enforcement action.
- 9.7 Recent legislation has introduced the ability for the County Planning Authority to apply to the Courts to have the four and ten year rule set aside where there has been ‘deliberate deception’ on the part of the offender in order to achieve immunity from enforcement action.
- 9.8 Following a desktop investigation, officers will seek to contact the landowner and make them aware of the reported breach. In this initial communication, a provisional site inspection date will be arranged.

⁵ *Town and Country Planning Act 1990 c. 8*

- 9.9 During an initial site inspection officers will attempt to substantiate the allegation. If the report is not substantiated, officers will seek to resolve the case. If the report is substantiated, officers will advise on the most expedient route to remedying the breach of planning control.
- 9.10 Advice in the initial sense will usually relate to regularisation or voluntary remedy of the breach of planning control. Regularising the breach would usually involve the submission of a planning application (or lawful development certificate application). Voluntary remedy will usually involve the landowner or operator taking practical steps in order to remedy the breach of planning control.
- 9.11 If the breach of planning control persists following advice/negotiation, officers will then consider the expediency of formal enforcement. Officers have access to a number of legislative tools, which can be utilised to remedy breaches of planning control. A list of planning enforcement tools is appended to this plan at **Appendix A**.
- 9.12 If the issuing of formal notices fails to remedy the breach of planning control, the authority may be minded to consider the expediency of further formal enforcement action. This may come in the form of prosecution, injunctive action or direction action. Descriptions of these forms of action can be found in **Appendix A**.
- 9.13 Once compliance has been achieved, with or without the taking of formal action, officers will continue to monitor the site in order to ensure the breach of planning control does not recommence. Once consistent compliance has been demonstrated officers will seek to resolve the case.
- 9.14 Following the decision to resolve the case, officers will prepare a closure note which contains all the matters relevant in deciding to close the case. At the point of closure, the landowner, operator, reporters and partner agencies/authorities will be notified of the cases' resolution.
- 9.15 The investigatory process outlined above should not be taken as a fixed chronology for the planning enforcement process. All breaches of planning control are investigated on a case by case basis. Officers will endeavour to prioritise cases based on severity of harm associated with the breach of planning control in occurrence.

10. What to expect from The County Planning Authority

Reporting a Breach

- 10.1 If you report an alleged breach of planning control to The County Planning Authority, at the very minimum an enforcement enquiry must include your name, your address, details of the alleged breach and the location of that breach. In order to ensure that the system is fair and equitable to all, certain information must be provided to ensure enquiries are neither false nor malicious. Where this information is not supplied the Council reserves the right not to investigate the matter, or to give such enquiries the lowest priority.
- 10.2 If you indicate that you wish to be updated in respect of your report, The County Planning Authority will update you at key stages of the investigation and will advise what the next steps are. If you do not notify the breach you will not receive any updates and/or future correspondence in relation to the investigation.

Time Scales

- 10.3 The County Planning Authority does not attach time scales to enforcement investigations. Each case is different and the specified course of action will depend on the details of the alleged breach. The County Planning Authority will endeavour to triage each case at the earliest opportunity. Following an initial assessment the County Planning Authority will seek to ensure that alleged breaches of planning control are investigated as soon as possible. Cases will be prioritised where there is demonstrable immediate and/or irreparable harm.

Operator or landowner of a site with an alleged breach

- 10.4 If the County Planning Authority approaches you about an alleged breach of planning control, you can expect that the Authority will attempt to negotiate with you by explaining the allegation in detail, enabling you to understand what has been alleged and how you can put it right. If you are served with a formal notice, the County Planning Authority will ensure that it is clear so you are able to understand fully what it is you are required to do.
- 10.5 Officers authorised under s196 of the Town and Country Planning Act 1990 (as amended)⁶ have rights of entry on to land without prior warning. It is a criminal offence to obstruct these officers from entering in order to undertake their duty. Officers

⁶ Town and Country Planning Act 1990 c. 8

authorised under this section of the Act will carry an authorisation to enter card with their details on it. If you are unsure of their powers, please ask to see this card.

County Standards

- 10.6 The County Planning Authority Service will:
- Keep all details of complainants in confidence in line with General Data Protection Regulation (GDPR)⁷⁸
 - Not take sides in a dispute and only judge what action is appropriate according to the evidence, particular circumstances and relevant policies; and
 - Ensure that everyone receives the same standard of courteous and professional service at all times.
- 10.7 It should be noted that the County Planning Authority does not investigate anonymous or vexatious complaints.

11. Monitoring of Planning Permissions

- 11.1 The County Planning Authority has over 40 active waste and mineral sites.
- 11.2 Under regulation 15 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012⁹, mineral planning authorities dealing with County Matter applications can charge to monitor mineral and landfill permissions. This covers initial implementation to the end of the period of aftercare required by a condition of the planning permission.
- 11.3 Section 19 of the Waste (England and Wales) Regulations 2011¹⁰ makes it a duty that where a planning authority has planning functions in relation to establishments or undertakings carrying out disposal or recovery of waste, the planning authority must ensure that appropriate periodic inspections of those establishments are carried out.
- 11.4 With regard to the statutory provisions set out above, the County Planning Authority will actively inspect all Landfill and Mineral sites within Buckinghamshire. Each site will be inspected at least once a year.

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

⁸ *Data Protection Act 2018 c.12*

⁹ The Town and Country Planning General Regulations (2012)2012 No.767

¹⁰ The Waste (England and Wales) Regulations (2011)2011 No.988

- 11.5 The County Planning Authority will create a monitoring schedule annually to determine the number of inspections required at each site. The number of inspections will be based on previous compliance assessments complexity and site specific details of the site. This initial figure may be revised in response to changes at the site or the availability of new evidence/information.
- 11.6 In addition to the prescribed inspections set out within the Monitoring Schedule, the County Planning Authority will undertake ad-hoc enforcement visits at permitted sites when breaches of planning control are alleged.
- 11.7 The County Planning Authority will also seek actively monitor other permitted waste management sites.

12. Procedural Matters

Working in Partnership

- 12.1 There is often overlap in the investigation of breaches of Planning Control, that relate to County Matters and other breaches of planning control, or other pieces of legislation, often involving investigations by other authorities such as the District Council's Planning and Environmental Health Teams, and the Environment Agency. Where an activity does not fall within the remit of the County Planning Authority to investigate, the investigating officer will refer the issue to the relevant authority and advise the complainant accordingly. Sometimes the responsibilities of two or more authorities may overlap and in these situations the Council will seek to work together with those other agencies.

Regulation 3 Developments

- 12.2 The County Planning Authority cannot take legal action against itself. However, the Compliance Team has responsibilities for resolving breaches of planning caused by County Council Developments. In the first instance, once a breach has been identified, the officers will seek to rectify the breach through negotiation with the relevant department of the Council. Where negotiation is unsuccessful, the breach will be reported to the Development Control Committee for consideration. Should the Development Control Committee decide that action is necessary, they will seek to gain a resolution through the involvement of the relevant Cabinet Member.

Review

- 12.3 This plan will be reviewed whenever there is a significant change in legislation, national or local policy, or otherwise every two years. It should however be noted that this plan may be reviewed at an earlier date due to the creation of The Buckinghamshire Council unitary authority, in April 2020.

Equality

- 12.4 As required as part of the Equality Act 2010 Section 149, in the drafting of this plan due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between different groups and foster good relations between different groups. It is not considered that the BLMEP would conflict with the requirements of the Equality Act 2010 or the Council's policy on equality.

Contact Us:

Online at: www.buckscc.gov.uk

Via telephone on 01296 395000

Dedicated mailbox: planningenforcement@buckscc.gov.uk

Appendix A- Planning Enforcement Tools

Negotiation	The County Planning Authority can and will use negotiation as a tool to achieve voluntary compliance in certain circumstances. In most cases, the Authority will usually start its investigation with negotiation and will revert to other types of enforcement action if required.
Planning Contravention Notice	A planning contravention notice (or PCN) can be issued upon a landowner or person(s) with an interest in land in order that information can be gathered about the land and/or its use. Once issued upon a person, they are legally obliged to respond to the notice and the questions therein, within 21 days.
Breach of Condition Notice	These can be served in certain circumstances where conditions on a pre-existing planning permission are being breached. A breach of condition notice cannot be appealed and further breaches will be considered a criminal offence.
Temporary Stop Notice	A temporary stop notice can be served where an unauthorised use of land (or any unauthorised activity which makes up the use of the land) is considered to be severely detrimental and the County Planning Authority decides that it needs to stop whilst it considers next steps. A temporary stop notice will remain in force for 28 days, after this date, the County Planning Authority must have decided whether to take further action, or no action. A further temporary notice cannot be served.
Enforcement Notice	An enforcement notice is served where the County Planning Authority has identified a breach of planning control and negotiation has failed. Following service of an enforcement notice, the County Planning Authority must give the person(s) on whom it is served a minimum of 28 days before it comes into effect. They are able to appeal within this time period, but if they do not, the notice comes into effect and breaches of any of the requirements contained within it become criminal offences.
Stop Notice	A stop notice can only be served alongside or where there is already an enforcement notice in place. A stop notice can stop all activities described in the enforcement notice, or the most harmful elements of the unauthorised development. If an enforcement notice is withdrawn or quashed (through appeal), then a stop notice will cease to have affect. Stop notices come with compensation risks and as such, the County Planning Authority will usually serve these in the most harmful situations, where - for instance - the harm being caused by a development is irreparable or entirely unacceptable.
Direct Action	This tool can only be utilised where there is an enforcement notice in effect (i.e. has not been appealed or was upheld on appeal). If the requirements of an enforcement notice have not been complied with, then a County Planning Authority may

	enter land and undertake works to comply with the whole or part of the notice. They can then charge the cost of the works back to the landowner and ultimately put a charge on land if the debt is not paid.
Injunction	An injunction is considered a last resort and can be an expensive strategy. The County Planning Authority must be able to demonstrate that no other means of restriction can be imposed and that the injunction is needed in order to protect amenity or environmental designations (such as the Green Belt). An injunction can apprehend an activity which is likely to occur or can require steps to be taken to comply with planning control. Once issued, breaching an injunction is considered to be contempt of court and as such, an offender may be imprisoned.
Compulsory Purchase	This option is not usually considered by Local Planning Authorities, as other methods of control are usually successful, however, in some cases, this may be considered to be an appropriate remedy for persistent breaches.
Prosecution/Confiscation	Prosecution can be brought where the requirements of a breach of condition notice, temporary stop notice, enforcement notice or stop notice are breached. If the County Planning Authority has sufficient evidence and it is considered to be in the public interest, then a prosecution will be commenced. Once a conviction is obtained, the County Planning Authority may consider confiscation proceedings under the Proceeds of Crime Act 2004 (POCA). This can enable the County Planning Authority to consider that all the proceeds obtained by the defendant during the 'breach period' were criminal and therefore can be seized. The maximum fine for breaching a breach of condition notice is; £2,500 per offence. The maximum fine for breaching all other notices is unlimited.
No action	This option is considered in some cases to be the most appropriate. In these cases it may be that: the District Council progress the investigation; it is not in the public interest to continue with the investigation; or the operational activity or change of use is immune from enforcement action (as it has occurred for more than 4 or 10 years respectively).