

Planning Enforcement and Site Monitoring Plan

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*Guidance on the monitoring and enforcement of
minerals and waste developments and on the
compliance of Regulation 3 and Cross boundary
planning applications in Hampshire*

**A guide for elected members, local communities, other local
planning authorities, developers and other interested parties**

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Contents

1. INTRODUCTION	3
2. RIGHT TO ENTER LAND	4
3. WHAT ARE BREACHES OF PLANNING CONTROL?	4
3.1. How to report a breach of planning control.....	6
4. HOW BREACHES OF PLANNING CONTROL ARE ADDRESSED FOR REGULATION 3 AND CROSS BOUNDARY DEVELOPMENTS	8
4.1 Who is responsible for enforcement of Regulation 3 and cross boundary developments?	9
5. HOW BREACHES OF PLANNING CONTROL ARE ADDRESSED AT MINERALS OR WASTE SITES	10
5.1. Taking formal enforcement action	10
5.2. Procedure for taking formal enforcement action	10
5.3. Determining the appropriate course of action	12
6. ENFORCEMENT ACTION IN PRACTICE	14
6.1. Resources allocated to enforcement and monitoring and prioritisation	14
6.2. Prioritising cases	14
7. DEALING WITH COMPLAINTS	15
7.1 Regulation 3 and cross boundary developments	15
7.2 Minerals and waste developments.....	18
8. MONITORING OPERATIONAL MINERALS AND WASTE SITES	20
8.1 Chargeable mineral and landfill site monitoring visits	20
8.2 Non-chargeable waste management site monitoring visits.....	23
9. MONITORING, ENFORCEMENT AND OTHER REGULATORY EGIMES	24
10. THE HUMAN RIGHTS ACT 1998	25
11. INFORMING THE DEVELOPMENT AND REGULATORY COMMITTEE ON ENFORCEMENT MATTERS	25
12. REVIEW OF THIS PLAN	26
APPENDICES	27
Appendix 1 - Powers Available to the County Council in Undertaking its Enforcement Function	28
Appendix 2 – Enforcement Procedures	32
Appendix 3 – Standards of Service.....	35
Appendix 4 - Interpretation of how the Human Rights Act may affect Enforcement Issues	
37	
Appendix 5 - Monitoring Fees Assessment.....	38

1. INTRODUCTION

Paragraph 58 of the [National Planning Policy Framework \(2019\)](#) (NPPF) states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local Planning Authorities should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate .”

In accordance with the NPPF, the Hampshire Local Enforcement and Site Monitoring Plan (‘the Plan’) sets out what enforcement and site monitoring service businesses and individuals can expect from Hampshire County Council as Mineral, Waste and County Planning Authority.

The County Council has the responsibility for determining applications for:

- Regulation 3 development is development that the County Council wishes to carry out and may include Schools; Libraries; Museums; Country Parks; and Development on other County Council owned land (e.g., farms).
- minerals sites such as quarries, processing facilities etc;
- waste sites; and
- some cross boundary planning applications where the proposal crosses the boundary with one of Hampshire’s National Parks.

When planning permission is granted, it is the applicant’s responsibility to ensure that all conditions associated with a planning permission are complied with.

This Plan sets out the Hampshire County Council’s (HCC) approach to planning enforcement of minerals, waste, County Council and relevant cross boundary developments.

It sets out:

- how breaches of planning control will be addressed and by whom.

and specifically, for Regulation 3 and cross boundary developments:

- how the County Council would seek to regulate any breaches of planning control relating to development undertaken by County service providers under [Regulation 3 of the Town and Country Planning General Regulations 1992](#).

and for minerals and waste developments:

- what action the County Council would take to address any breaches; and
- establishes formal procedures to enable the County Council, both the Regulatory Committee (the Committee) and officers acting under delegated powers, to be consistent and effective in their approach.

The County Council does not have power to take enforcement action against its own Regulation 3 developments, instead this power is given to the appropriate Local Planning Authority. It also does not have enforcement powers for any cross-boundary planning applications (with the exception of any cross boundary minerals or waste proposals). More information on this can be found in [section 4](#) of the Plan. Previously there has been a separate Protocol for compliance of Regulation 3 developments. This Protocol will be removed on the publication of this Plan as its provisions have been encompassed into this Plan.

For operational minerals and waste site with planning permissions granted by the County Council, officers undertake routine monitoring to ensure compliance with conditions imposed as part of such permissions. Where there are breaches of planning control from unauthorised mineral or waste development or from non-compliance with planning conditions, the County Council has the discretionary power to take enforcement action as considered appropriate. More information on this can be found in [section 5](#).

The Plan also sits alongside the [Development Management Charter](#) as well as a wider suite of procedural and guidance documents for development management in Hampshire.

2. RIGHT TO ENTER LAND

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 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 not exceeding level 3 on the standard scale.

3. WHAT ARE BREACHES OF PLANNING CONTROL?

It is the applicant's responsibility to ensure there is not a breach of planning control.

[National Planning Practice Guidance](#) gives details about what is a breach of planning control.

Enforcement and post-permission matters Paragraph: 001 Reference ID: 17b-001-20140306 states that: A breach of planning control is defined in [the Town and Country Planning Act 1990](#) as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken.

[The Town and Country Planning Act 1990](#) imposes a general but not mandatory duty to ensure compliance with planning control. Accordingly, because there is an element of discretion as to whether or not it might be expedient to take appropriate action, there is a need for procedures to be adopted and followed to ensure that the County Council's approach is consistent and effective when deciding what action should be taken.

Breaches of planning control are likely to be brought to the attention of the County Council either by routine site inspections for other development at the site or following a complaint from a member of the public or other third party.

The types of breach that may be likely to occur during development include:

- i. Breach of conditions attached to an extant planning permission;
- ii. The carrying out of development where there is no planning permission, and such a planning permission is unlikely to be granted; and
- iii. The carrying out of development where there is no planning permission, but permission is likely to be granted retrospectively.
- iv. Breach of conditions attached to an extant planning permission;
- v. The carrying out of development where there is no planning permission, and such a planning permission is unlikely to be granted; and
- vi. The carrying out of development where there is no planning permission, but permission is likely to be granted retrospectively.

Breaches of planning control may include:

- i. Unauthorised development;
- ii. Unauthorised erection of a structure;
- iii. Development not in accordance with the approved plans of the planning permission;
- iv. Material change of use of a building or land;
- v. Failure to comply with the conditions attached to a planning permission; and
- vi. Failure to properly maintain land so that it affects the amenity of the area.

Examples of a breach of planning control include:

- Commencing on site without planning permission having yet been granted;
- Failing to comply by a condition of a planning permission;
- Having a development with planning permission that has lapsed due to exceeding a condition with a timescale giving temporary permission; and
- Failing to discharge a condition requiring submission and approval of information via an Article 27 application.

3.1. How to report a breach of planning control

You can contact the Strategic Planning team either on the webpage at [Report a Suspected Planning Breach](#).



Microsoft Forms

Before making a complaint, it is helpful to have as much information as possible, such as:

- Description of the possible breach;
- Date the activity started (is it continuing?);
- Site address;
- Name and any details of the site owner or those involved (including vehicle registration numbers if possible); and
- Name, address and telephone number or email of the complainant.

More information on confidentiality in relation to complaints is set out in [section 7.3](#) of the Plan.

4. HOW BREACHES OF PLANNING CONTROL ARE ADDRESSED FOR REGULATION 3 AND CROSS BOUNDARY DEVELOPMENTS

Regulation 3 developments

Regulation 3 development is development undertaken by the County Council under [Regulation 3 of the Town and Country Planning General Regulations \(1992\)](#). It may include:

- Schools;
- Libraries and Discovery Centres;
- Museums;
- Country Parks;
- Highway Schemes; and
- development on other County Council owned land (e.g. farms).

A Regulation 3 development has exactly the same level of requirement of compliance as other planning permissions issued by the County Council for minerals or waste development or indeed by any other planning authority.

It is expected that the County Council will promote best practice in its own development, be it through County Council staff or contractors. Where development is granted planning permission, the applicant is obliged to ensure that all planning conditions are complied with in full. It is very important to ensure compliance to minimise the risk of negative impact to Hampshire County Council's reputation. Applicants should comply with permissions granted as it helps to demonstrate to local communities and other interested parties that the County Council follows its own procedures and complied with permissions granted.

Effective enforcement of Regulation 3 developments is also essential as it ensures public confidence in the planning system. Whilst the enforcement of a breach of planning control relating to a Regulation 3 development is carried out by the relevant local District or Borough Council, the County Council will still have a role to play in helping to address any breaches.

Cross boundary developments

In some instances, the County Council will be planning authority for proposals that would normally be determined by the relevant District or Borough Council. *R v Northumberland National Park (1999)* changed the way cross boundary proposals (with a National Park) should be determined / and by whom. Where an application straddles a National Park, that the part of an application outside of the National Park should be dealt with by the County Council and not the relevant District or Borough Council.

Like with Regulation 3 developments, the effective enforcement of cross boundary developments is also essential as it ensures public confidence in the planning system. In most instances the enforcement of a breach of planning control will be carried out by the relevant local District or Borough Council unless the proposal relates to a minerals or waste development.

4.1 Who is responsible for enforcement of Regulation 3 and cross boundary developments?

The County Council is only authorised in law to take enforcement action against development which is considered a 'county matter' - for minerals and waste development. [Paragraph 11 of Schedule 1 of the Town and Country Planning Act 1990](#) clarifies that although the County Council can enforce against mineral and waste developments granted by the authority, all other enforcement powers fall to the District planning authority (i.e., the relevant [District or Borough Council](#)).

More information on how complaints are managed is set out in [Section 7](#) of this Plan.

5. HOW BREACHES OF PLANNING CONTROL ARE ADDRESSED AT MINERALS OR WASTE SITES

5.1. Taking formal enforcement action

Potential breaches of planning control, are likely to be brought to the attention of the County Council through either routine site monitoring inspections, or as a complaint from a member of the public or other third parties.

The Enforcement Powers available to the County Council as Minerals and Waste Planning Authority are set out at [Appendix 1](#).

The County Council has the overall responsibility for taking enforcement action relating to 'County matters'. 'County Matters' are defined in [Schedule 1 of the Town and Country Planning Act 1990](#) and the [Town and Country Planning \(Prescription of County Matters\) \(England\) Regulations 2003](#).

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 need for procedures to be adopted and followed to ensure that the authority's approach is consistent and accountable when deciding what action should be taken. A flow chart is attached at [Appendix 2](#) to this Plan outlining the general progression of enforcement investigation.

5.2. Procedure for taking formal enforcement action

Initial Investigation

The investigating officer will, under normal circumstances, visit the site in question to determine whether a breach of planning control has taken place.

Checks will normally be made whether planning permission exists, whether the development has [permitted development rights](#) or benefits from a lawful use.

When necessary, [City/District/Borough Councils](#) will be consulted to determine whether any locally granted permission exists.

Follow-up Action

Upon concluding there has been a breach of planning control, the investigating officer needs to consider the harm being caused and make a judgment as to whether or not planning permission is required and if so whether it is likely to be granted for the development in question. If it is not immediately expedient to take enforcement action, as the harm being caused is limited, negotiation will normally be the first step

to 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 implemented swiftly, the need for formal enforcement action may be avoided.

If remedial action to address the breach of planning control needs to be taken, the investigating officer will write to all parties involved setting out what is required to correct the situation and advising of the consequences that would result from failure to carry this out. A timescale will always be set for the completion of the works. Confirmation will then be sought from the parties in question indicating that they are willing to carry out these works in the time period. If the works do not progress, or a commitment is not received to carry out the necessary remedial works, the investigating officer will then consider taking formal enforcement action. In certain circumstances, it may be appropriate to seek a retrospective planning application where the investigating officer is of the view that planning permission may be granted and such permission would enable the County Council to control the development through the imposition of conditions. In these situations, those responsible for the unauthorised development will be invited to make a planning application. If such an application is not forthcoming within a reasonable timescale, the County Council may then decide to take formal enforcement action to remedy the breach.

Enforcement Action

The investigating officer will make a judgement as to whether it is expedient to take formal enforcement action in particular whether the development unacceptably affects public amenity, or the existing use of land and it is in the public interest to do so. A recommendation will be made that enforcement action is taken, primarily based on the conflict with planning policy and the harm being caused. Formal enforcement action, in certain circumstances, may well be the only effective way in which to remedy the breach of planning control.

There are a range of notices available to the County Council, as listed in Government Guidance: [Enforcement and post-permission matters](#) when considering taking formal enforcement action and the decision as to what route to take will be made in liaison with the council's Legal Service. These powers are outlined in [Appendix 1](#). Enforcement action will always be commensurate with the breach of planning control to which it relates (for example, it would be usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site).

Contravening Enforcement Action

Where a breach of planning control continues after an Enforcement Notice has taken effect, the County Council may take appropriate action against the person committing or responsible for the breach of planning control. This may involve

prosecution proceedings in the Magistrates Court or Crown Court as well as taking out an injunction against the perpetrator if necessary.

5.3. Determining the appropriate course of action

Where development is carried out without permission

It is not an offence to carry out development without first obtaining the necessary planning permission. Where the assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, a retrospective planning application should be submitted (together with the appropriate application fee). It may also be appropriate to consider whether any other body (e.g. the Highway's Authority, Local Planning Authority, Environmental Health Authority or Environment Agency) is better able to take remedial action.

While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice will not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought.

In such circumstances, a Planning Contravention Notice will be considered to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land may be told that, without a specific planning permission, they may be at a disadvantage if they subsequently wish to dispose of their interest in the land and has no evidence of any permission having been granted for development comprising an important part of the valuation.

Where unauthorised development can be made acceptable by the imposition of conditions

Where the development has been carried out without the requisite planning permission, but the development could be made acceptable by the imposition of planning conditions (for example, to control the hours, or mode, of operation; or to carry out a landscaping scheme), the Local Planning Authority may invite the owner or occupier of the land to submit an application, and pay the appropriate application fee, voluntarily.

It may be pointed out to the person concerned that the authority does not wish the business, or other activity, to cease; but has a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and the relevant planning policies. If, after a formal invitation to do so, the owner or occupier of the land refuses to submit a planning application, the council will consider whether to issue an enforcement notice to remedy any 'injury to amenity' which has been caused by the breach.

Where the unauthorised development is unacceptable on the site, but relocation is feasible

It is not the authority's responsibility to seek out and suggest to the owner or occupier of land on which unauthorised development has taken place an alternative site to which the activity might be satisfactorily relocated.

If an alternative site has been suggested, officers will make it clear to the owner or occupier of the site where unauthorised development has taken place that they are expected to relocate to the alternative site. A reasonable timescale, within which relocation should be completed, will be expected. What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and secure an interest in, the alternative site; and the need to avoid unacceptable disruption during the relocation process. If a timetable for relocation is ignored, it will usually be expedient for the authority to issue an enforcement notice.

Where the unauthorised development is unacceptable and relocation is not feasible

Where unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site, the owner or occupier of the land will be informed that the authority is not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all.

If the development nevertheless provides valued local employment, the owner or occupier will be advised how long the authority is prepared to allow before the operation or activity must stop or be reduced to an acceptable level of intensity. If agreement can be reached between the operator and the County Council about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, formal enforcement action may be avoided.

If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.

Where the unauthorised development is unacceptable and immediate remedial action is required

Where, in the Council's view, unauthorised development has been carried out and it considers that:

1. The breach of control took place in full knowledge that planning permission was needed (whether or not advice to this effect was given by officers to the person responsible);
2. The person responsible for the breach will not submit a planning application for it (despite being advised to do so); and/or;
3. The breach is causing harm to public amenity or the environment.

6. ENFORCEMENT ACTION IN PRACTICE

6.1. Resources allocated to enforcement and monitoring and prioritisation

Enforcement and monitoring of minerals and waste sites is labour intensive and in practice often involves a large proportion of officers' time, especially in complex cases where there might be a significant impact on amenity or highway safety or when frequent monitoring is required. Many Authorities rely on their Planning / Development Management Officers to contribute to the overall enforcement and monitoring function, in addition to their normal casework. However, Hampshire employs a specific team of Enforcement and Monitoring Officers who are responsible for recording and dealing with all complaints/referrals, all routine and chargeable monitoring of authorised sites and the investigation of unauthorised activities. This is undertaken in accordance with this Plan.

6.2. Prioritising cases

In order to make the best use of time and resources there is a need to prioritise cases according to the urgency of response that is required and without losing sight of the 'lesser' breaches. This enables staff to concentrate on the more harmful cases. Notwithstanding the appropriate course of action described above, as each case is logged in, it will be considered as a priority under the following headings:

1. Safety Hazards: Whether the development is causing or could cause a hazard.
2. Existing Enforcement Action: Whether existing enforcement action is being taken or whether the matter has been drawn to the attention of the operator on previous occasions.
3. Severity of Breach/Proportionality: Whether, for instance, the degree of harm caused to residents, the highway network, the landscape or the countryside is significant or not.

4. Past History of Operator: Whether the operator has previously shown disregard for planning legislation and is therefore likely not to respond to reasonable requests to curtail activities.

5. Time Periods: Whether the periods of time for taking enforcement action are running out.

6. Political Dimension: Whether there is significant public interest in action being taken.

The above headings will be made into a diagram in the final version of the document.

7. DEALING WITH COMPLAINTS

7.1 Regulation 3 and cross boundary developments

In the event that a complaint is received by the County Council about a County Council development, County Council planning officers will attempt to liaise and resolve any issues which the applicant before the need for enforcement measures to be undertaken by the District or Borough Council.

The following procedure applied to dealing with complaints about Regulation 3 developments is set out in Figure 1.

Figure 1: Procedure for dealing with complaints



Registering

A record of the complaint will be added to the County Council's planning database upon receipt once it has been ascertained that the complaint relates to a permission granted by the Council for a Regulation 3 development.

Site Monitoring and Gathering of Information

In instances where there are breaches of planning control associated with a Regulation 3 development, the County Council will try and resolve the issue in discussion with the applicant.

Officers acting for the County Council as planning authority may need to do initial investigation of any breaches of planning control which relate to developments permitted by the County Council once informed about them.

In such instances, County Council officers and contractors working with or for the County Council shall enable site inspections to take place and assist in providing any necessary information.

What happens if the County Council cannot resolve the complaint?

As the County Council cannot instigate enforcement action on its own development, in the event that a breach is identified and not addressed appropriately by the applicant, the complaint can be referred to the relevant District / Borough Council for investigation. This approach may be employed for serious breaches of planning control as a last resort and considered on a case-by-case basis.

The investigation enforcement procedures of the relevant District / Borough Council will then apply. The issue on whether it is expedient to take enforcement action will be determined by the District / Borough Council and not the County Council.

The above text will be made into a diagram in the final version of the document.

7.2 Minerals and waste developments

The following procedure will be applied when a complaint is received by the County Council:

- a) Acknowledgement of complaints: A new complaint record will be created in our planning database and the complaint will be acknowledged within 3 working days of the Council receiving the complaint;
- b) Checking the facts: This may include a site inspection and checking records;
- c) If no breach is found: The complainant(s) and, if necessary, the company involved, will be informed within 10 working days of the date of receipt of the complaint;
- d) If a breach is found but is not a 'County Matter': The relevant District/Borough Council/Environment Agency will be informed of the complaint within 10 working days of the date of receipt of the complaint, whilst informing the complainant(s) and, if necessary, the company involved within the same period;
- e) A breach is found that is a County Matter: The necessary course of action will be considered in accordance with this Plan and all parties will be informed within 10 working days of the date of receipt of the complaint.

The above text will be made into a diagram in the final version of the document.

Note: As stated, formal enforcement action may not always be expedient or appropriate.

Where complaints appear to be repeatedly unfounded and/or vexatious the complainant will be directed to the County Council's formal complaints procedure for a resolution.

The standards of service are set out at [Appendix 3](#). An enforcement investigation can be lengthy and complex. The time taken to determine each case will vary depending on the site, the people involved, and the type of breach reported.

7.3 Confidentiality

All complaints received by the County Council will be dealt with in the strictest confidence and details of the person reporting will not be made known without their agreement. The nature of the alleged breach is not confidential. It is important to note that if the complaint progressed into a court of law, you may be requested to provide evidence.

Anonymous complaints will not be investigated unless they relate to a matter of public safety or serious environmental damage or harm to amenity.

Our [Privacy Statement about planning enforcement and complaints](#) sets out our approach to data protection.

8. MONITORING OPERATIONAL MINERALS AND WASTE SITES

8.1 Chargeable mineral and landfill site monitoring visits

Mineral and landfill sites involve continuous activity sometimes over many years. Planning permissions are subject to technical planning conditions to help mitigate the environmental impact of mineral and waste working.

In 2006, [Regulations](#) initially came into force in England to allow the Council to charge a fee to mineral and waste operators for site inspections to monitor compliance with the planning permissions.

The purpose of a monitoring site visit is to check compliance with operating conditions attached to mineral and landfill planning permissions, any related planning obligations relevant for a site and the need to ensure that no unauthorised development is taking place.

Officers and operators should work together constructively to review compliance with permissions in the light of the stage of development reached and possible changing operational circumstances and needs. In this way problems can be avoided, and formal enforcement action is less likely to be necessary.

The Government considers that charging a fee for site monitoring is a positive process that will have several positive outcomes. The main benefits are improving communications and relations between operators and the planning authorities and local communities close to mining or landfill operations. The monitoring will encourage good practice in site operation and management and therefore reduce the need for enforcement or other action. This is very much a proactive exercise rather than a reactive way of working. By working in this way, the number of potential complaints received from local residents to the planning authorities should be reduced.

The Hampshire Approach:

The [Regulations](#) (and as amended in 2012) allow the County Council to charge for up to 8 visits per year, although sites that are inactive, in aftercare or dormant can only be charged for 1 visit per year.

In order to determine the number of visits, an assessment is made for each site taking into account issues such as:

- size of site;
- type of operation;
- previous history of compliance or enforcement;
- location and distance to sites with environmental protection; and
- local or political sensitivities

More information on this can be found in [Appendix 5](#).

If an active site has a very poor history of compliance and has received several justified complaints and the operator shows no sign of improving and working according to the planning permissions, then it is very likely that the maximum number of 8 visits per year would be required for this site. Further visits may also be warranted but these cannot be charged for.

If the operator starts to comply with conditions and fewer complaints are received about the site, the following year the number of visits could be reduced.

Inactive sites receive the maximum allowance of one chargeable monitoring visit per year.

If, after taking all of this into account, an operator considers that it has been subjected to an excessive number of visits then they are entitled to approach the Local Planning Authority to request that the number of annual visits is reduced.

All waste disposal sites (namely landfill sites) and mineral sites under the remit of the County Council will be visited by an officer with suitable experience. The frequency of these visits will vary depending on whether the site is dormant, inactive or active, and all sites will be visited in the financial year.

The Regulations have set the fees for monitoring visits, at £397.00 per visit to an active site and £132.00 per visit to an inactive site, as at February 2018. The operator of the site is responsible for the payment of the fee.

The following applies:

- If there are multiple operators within a site, the operator in overall control is expected to pay the fee. If multiple operators cannot be identified, or where an operator is not currently present at a site, then the site owner(s) are required to pay the fee.
- The authority agrees the invoicing arrangements with the individual operators. The fee is only to be charged after the monitoring site visit has taken place. A period of payment in accordance with the County Council's invoicing procedures is agreed and any failure to pay is referred through the Council's debt recovery procedure.

When the Regulations first came into force a letter was sent to the operator to explain the site monitoring fee process and procedure and the number of visits that the site was due. For relevant developments that have gained permission since, a letter is sent to the operator informing them of the position prior to the development commencing.

Notification of the number of visits is renewed at the beginning of each financial year and the operator is informed in writing.

The Local Planning Authority compile a file which contains a complete planning history of the site and a list all the current and previous planning permissions, any related planning obligations or legal agreements and the site monitoring reports.

A date and time for site visit is scheduled with the operator for visits for specific purposes (i.e., aftercare meetings). Normal routine monitoring is unannounced.

At the Chargeable Site Monitoring Visit:

1. A systematic review of all the conditions attached to current planning permissions, and any related planning obligations or legal agreements that are associated with the operation, is carried out;
2. Boundary Limits are checked;
3. Discussion is held with the operator to reach agreement on any course of action and timescales to redress any non-compliance with conditions attached to the current planning permission;
4. Recognition of any good practice is noted;
5. Notes of the visit are made electronically on the Site Monitoring form and compliance with all relevant conditions is graded (from 0 for fully compliant up to 3 for a serious problem requiring immediate remedy to avoid formal enforcement action). The form is signed by the Monitoring Officer and the Site Manager and a copy emailed to the Site Manager and/or Estates Manager or other responsible person;
6. Photographs / videos are taken of the site.

The above text will be made into a diagram in the final version of the document.

After the site monitoring visit:

1. The form is entered onto the County's database;
2. On receipt of any comments from the site operator, if appropriate, the planning authority makes any amendments to the monitoring report;
3. An invoice for the monitoring fee is raised and is sent out on quarterly basis;
4. The operator is then be expected to carry out any actions agreed following the site visit and identified in the report in order to comply with the relevant planning permissions and the conditions/obligations/legal agreements associated with that and to do so within the agreed timescales to avoid potential enforcement action against a breach of planning control.

The above text will be made into a diagram in the final version of the document.

8.2 Non-chargeable waste management site monitoring visits

The [Waste \(England and Wales\) Regulations 2011](#) came into force in 2011.

Regulation 19 specifically requires that the (waste) planning authority must ensure that appropriate periodic inspections of those establishments or undertakings (carrying out the disposal or recovery of waste) are made.

Currently the County Council has limited resources available to monitor all the waste sites on a frequent basis. However, the Waste Regulations only require 'periodic inspection'.

Matrix working arrangements have been made with other Sections of the Economy Transport and Environment Department within the Council where sites are inspected for other reasons, i.e. Household Waste Recycling Centre's or Waste Transfer Stations under the waste disposal contract. Where this takes place, all planning issues will also be considered and the reports of these visits are passed to the Monitoring & Enforcement Team. Any issues or concerns raised are then addressed by Monitoring & Enforcement Officers.

With regards the remainder of the waste sites, it is considered that the most appropriate method of monitoring is through a 'risk-based' approach that would set the frequency of visits based on potential environmental risk and previous record of complaints/planning enforcement.

If the site is a high risk and has been subject to planning enforcement action and/or had planning complaints, then the frequency of visits is recommended to be at least every 3 months. If a site is low risk and the WPA has not received complaints or taken previous action then monitoring visit should take place annually.

Sites that are also monitored by the Environment Agency will be considered as lower risk and so have less frequent routine visits. Complaints or concerns will continue to be investigated as a priority irrespective of the set frequency of routine visits. More information on monitoring by other regimes can be found in section 9 of this Plan.

9. MONITORING, ENFORCEMENT AND OTHER REGULATORY REGIMES

There is often an overlap of enforcement of activities involving waste disposal and recycling between the County Council and other authorities, particularly the District and Borough Councils' Environmental Health Departments and the Environment Agency (EA). Other regulatory regimes include those operated by Natural England and the Health and Safety Executive.

Environment Agency

The EA is responsible for the control of pollution and for the regulation of waste activities through the Environmental Permitting regime. Even if planning permission is granted by the County Council, the applicant may have to satisfy the EA that it should grant an Environmental Permit before it becomes operational.

The EA will usually be the lead authority where an activity results in or has the potential to result in pollution. Some activities may be a criminal offence under legislation enforced by the EA so they may be in a stronger position to remedy harm, if required.

District and Borough Councils Environmental Health

Regardless of the planning position, where an operation does not hold a Permit from the Environment Agency, Environmental Health Officers within District and Borough Councils have powers to monitor and enforce against statutory nuisance; this can include noise, odour and dust.

Joint Working

In all cases that involve multiple authorities, the County Council will seek to engage early, and a joint investigation may take place. Once there is sufficient information to do so, a decision will be made about which authority is most appropriate to lead the investigation.

10. THE HUMAN RIGHTS ACT 1998

The enactment of the [Human Rights Act](#) reinforces the need for openness and consistency as the decision to take, or not to take action may adversely affect someone's rights under the Act.

The County Council will seek to uphold an individual's rights as set out in the European Convention on Human Rights. Where interference is permitted with an individual's rights by that Convention the Council will seek to ensure that any action it does take which affects a person's rights is:

1. Proportionate to the breach of planning control it seeks to address and;
2. In accordance with the exceptions set out in the article which permit interference with that right.

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. When reaching its decision on whether or not to take action and, if so, on what action to take, the Council will consider the effect on the rights of these third parties as well as on the rights of the person committing the breach of planning control.

[Appendix 4](#) lists the above-mentioned rights conveyed under the [Human Rights Act](#) 1998, and gives an interpretation of how they may affect enforcement issues.

The [Human Rights Act](#) 1998 is currently still enshrined within British law but its long-term future is unsure and may be rescinded and/or amended following the UKs leaving of the European Union.

11. INFORMING THE DEVELOPMENT AND REGULATORY COMMITTEE ON ENFORCEMENT MATTERS

Where there has been a breach of planning control on a County Council, minerals or waste development site, the matter will be reported to the next available and suitable Regulatory Committee (on the request of the Chairman) or at least a three-monthly basis.

This will include reports on items where the Committee itself has not authorised enforcement action to be taken (i.e. the action is authorised under officer delegated powers).

12. REVIEW OF THIS PLAN

This Plan will be reviewed every two years. The next review is due in 2023.

Any review of the Plan will be reported back to the Regulatory Committee.

APPENDICES

Appendix 1 - Powers Available to the County Council in undertaking its Enforcement Function

The below text will be summarised and made into a diagram in the final version of the document.

There are a number of powers available to the County Council when it considers investigating unauthorised development and taking enforcement action. These are described 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

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 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 not exceeding level 3 on the standard scale.

Requisition for Information

Where the County Council considers it has sufficient information regarding activities on land use but requires further details on the ownership of the land, a Requisition for Information may be issued.

The issuing of a Requisition for Information is optional and does not have any bearing on other action taken by the local planning authority.

Planning Contravention Notice

A Planning Contravention Notice (PCN) may be issued in order to ask specific questions in relation to an alleged breach in planning control. This enables a decision to be made regarding whether or not formal enforcement action is necessary or should be taken.

There is a legal requirement to respond to a PCN within 21 days of the date of the notice, unless a longer period of time is specified in the notice.

The issuing 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. The PCN also provides for a formal meeting between the planning authority and the recipient of the notice, whenever appropriate. This may help to clarify any misunderstandings and assist in resolving the situation.

Non-compliance with completing the requirements of a PCN is an offence punishable on summary conviction to a fine not exceeding level 3 on the standard scale. Knowingly providing false or misleading information in response to a PCN, is an offence punishable on summary conviction to a fine not exceeding level 5 on the standard scale.

Enforcement Notice

The authority can issue an enforcement notice where there has been an identified breach of planning control and where it is considered expedient to do so. 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 of 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 affected by the notice.

An enforcement notice must come into effect not less than 28 days after its date of issue. There is a right to appeal to the Secretary of State, 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.

Failure to comply with the requirements of an enforcement notice is a criminal offence which is liable on summary conviction to a fine per offence, or on conviction on indictment to an unlimited fine.

Stop Notice

A stop notice must be issued either with or before the enforcement notice comes into effect. A stop notice cannot be issued 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. A stop notice would not normally come into effect until 3 days after service unless special considerations are attached indicating that it should come into effect earlier.

There is no right of appeal against a stop notice. An appeal against an enforcement notice will hold the requirements of the enforcement notice in abeyance, but the requirements of the stop notice to cease a particular activity remain effective.

As a stop notice prevents an activity from continuing, there is a right to claim compensation against the local planning authority if the notice has not been served properly.

Non-compliance with the requirements of a stop notice is an offence, punishable by a fine on summary conviction and, on conviction on indictment, to an unlimited fine.

Temporary Stop Notice

The authority may issue a temporary stop notice (TSN) where there has been an identified breach of planning control and when it is expedient that the activity, or any part of the activity that amounts to the breach, should cease immediately.

Unlike a 'stop notice', a 'temporary stop notice' can be served on its own; there is no requirement for it to be served with an enforcement notice. 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 a judicial review.

The notice has effect immediately but ceases to have effect after 28 days, unless it is withdrawn earlier. This allows a period of time (up to the maximum of 28 days) for the local planning authority to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue.

As a temporary stop notice prevents an activity from continuing, there is a right to claim compensation against the local planning authority if the notice has not been served properly.

There is risk of immediate prosecution for failing to comply with a temporary stop notice, for which a fine is payable on summary conviction for the first offence, and for any subsequent offence, or on conviction on indictment to an unlimited fine.

Breach of Condition Notice

A breach of condition notice (BCN) may be issued where there has been a breach of 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 a judicial review.

The BCN will set out the necessary remedial action to ensure compliance with the condition(s) being breached, with a minimum period of 28 days for compliance.

The penalty for non-compliance with a BCN is an offence punishable on summary conviction to a fine not exceeding level 3 on the standard scale.

Injunction

Where the authority deems it expedient to restrain any actual or anticipated breach of planning control it may apply to either 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 other powers to enforce planning control.

The taking of such action would be necessary where other enforcement powers are unlikely to stop unauthorised activities.

Failure to comply with the terms of an injunction is contempt of court. The court has the discretion to imprison anyone found to be in contempt, or to administer an unlimited fine.

Direct Action by the County Council

In order to secure compliance with an enforcement notice the Planning Acts empower local planning authorities to take direct action in default by the owner or occupier of the land.

Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may:

1. Enter the land and take the steps; and
2. Recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.

Planning legislation also creates an offence of wilful obstruction. Any person who wilfully obstructs any person who is exercising the local planning authority's power to take direct action may be guilty of an offence. The offence is triable in the Magistrates Court, and punishable by a fine.

The Town and Country Planning Act 1990 enables local planning authorities to recover from a person who is then the owner of the land any expenses reasonably incurred by them in taking any direct action to carry out the steps required by an enforcement notice.

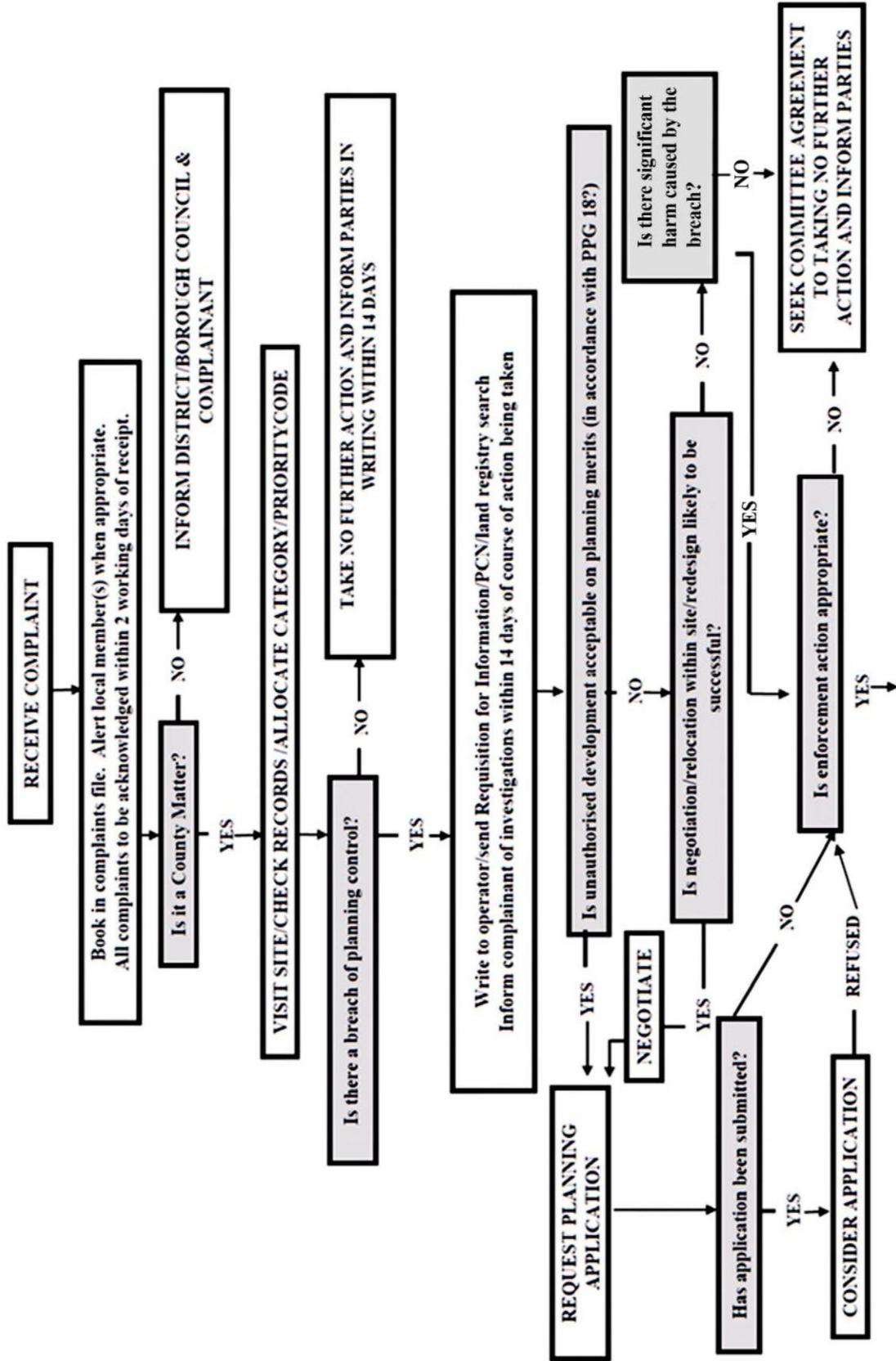
By virtue of regulation 14(2) of the Town and Country Planning General Regulations 1992, the local planning authority's expenses in taking default action become a legal charge on the land to which the enforcement notice relates until the expenses are fully recovered. This charge is binding on successive owners of the enforcement notice land.

The decision by the County Council to take direct action may be challenged by an application to the High Court for a Judicial Review, of the Council's decision.

Appendix 2 – Enforcement Procedures

Appendix

ENFORCEMENT PROCEDURES FLOW CHART



Both diagrams be updated in final version of the Plan

Appendix 3 – Standards of Service

The following text will be made into a diagram in the final version of the Plan.

Openness

1. We will advise any complainant and anyone carrying out unauthorised development as to the code that applies;
2. We will keep as much as possible in the public domain whilst protecting the confidentiality of the complainant and any sensitive business information;
3. We will report on a three monthly basis to the Council's Regulatory Committee the latest situation on all ongoing enforcement cases;
4. We will meet with company staff when requested both before and during any enforcement action to seek an agreed solution.

Helpfulness

1. We will keep any complainant advised as to the stage reached in any enforcement action.
2. We have a specific enforcement officer to whom all initial contact can be made. However, the team's officers can answer general enquiries.
3. All letters and telephone calls will be answered promptly and all responses will leave a contact name and telephone number.

Complaints about the Service

The County Council has clear and specific procedures, which are published as part of all policy standard documents. If we cannot resolve your complaint, you will be advised on how to take this further.

Proportionality

1. Following a complaint received, we will deal with each case on a priority basis, ascertained during an initial investigation.

2. Depending on the scale of the breach of planning control, we will always seek co-operation to resolve problems and use formal enforcement powers only as a last resort.

Consistency

1. We will adhere to the Enforcement Policy;
2. We will hold regular Enforcement and Monitoring Officers' Group meetings and liaise with our opposite numbers in the City/District/Borough Councils to ensure a consistent approach;
3. We will endeavour to maintain close liaison with the Environment Agency;
4. We will share information with these other enforcing agencies, subject to confidentiality;
5. Where discretion is applied against standards, this will be the responsibility of the team's manager whose responsibility is to ensure that it happens in a fair, equitable and consistent way.

Procedures

1. Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain the breach, the requirements of the authority to put the matter right including time scales and remind the developer of the powers the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advise.
2. The rights of appeal of the developer against any formal notice will be clearly explained;
3. Before any formal enforcement action is undertaken, operators will be invited to discuss their problems with the officer, unless immediate action against the breach of planning control is necessary;
4. Any threat of formal action will be followed up with such action swiftly if there is inadequate evidence of steps being taken to resolve the problems.

Appendix 4 - Interpretation of how the Human Rights Act may affect Enforcement Issues

Article of the Act	How relates to enforcement
Article 6: Right to a fair trial	<p>Any person(s) issued with an enforcement notice has the right to appeal to the First Secretary of State and eventually the Courts. This ensures that there is no breach of an individual's right to a fair trial against the decision of the enforcement-taking authority to take action.</p> <p>Any person affected by an unauthorised development should expect a service within a reasonable time period by the authority, which following Planning Enforcement Policy should ensure that there was no breach of human rights or Ombudsman intervention.</p>
Article 8: Right to respect for private and family life	<p>Both parties to any dispute could claim that their rights under this article were being adversely affected by a decision of the enforcement-taking authority. Therefore, it is important that whether action is taken under delegated powers or following a Committee resolution, the impact on the parties' rights under this article is, and is actually seen to be, taken into account. The decision should be based on the balance between the respective harms to private and family life of both sides whilst seeking to minimise any interference at all.</p> <p>Any interference that does occur with this right must also be seen to be proportionate to the need to restrain the breach of planning control that is being committed. Accordingly, to ensure that this factor is given sufficient weight in reaching any decision whether or not to take enforcement action, it is considered that it should be specifically referred to under the severity of breach/proportionality section in the enforcement priority categories.</p>
Article 14: Prohibition of discrimination	Compliance with the Planning Enforcement Policy should not result in any discrimination.
Article 1 of the First Protocol: Protection of property	<p>The right to peaceful enjoyment of possessions is a matter of balance between those in breach and those affected by the breach.</p> <p>Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be</p>

	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.
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Appendix 5 - Monitoring Fees Assessment

Hampshire Minerals and Waste Sites Monitoring Strategy

Site Name:	Date:
HCC Number:	Grid Ref:

1. Environmental Appraisal (all current uses on site)

A. Waste (as defined post Landfill Directive)

Hazardous Landfill (5)		Transfer Station (3)	
Non hazardous Landfill (HCl) (4)		MRF (2)	
Inert Landfill (3)		Compost Site (2)	
Clinical Waste Transfer Station (4)		HWRC (2)	
Chemical Treatment Plant (4)		Pet Cemeteries (1)	
Incinerator (3)		WWTW (1)	
Gas flare / power Plant (1)			

B. Minerals

Minerals extraction and processing (5)		Aggregates wharf (2)	
Minerals extraction (4)		Oil and gas extraction (2)	
Aggregates recycling (3)		Conbloc (1)	
Aggregates rail depot (2)			

2. Operational Status

Operational (2)		Pre-operational (-2)	
Restored (-1)		Lapsed (-2)	
Aftercare (-1)		Dormant (-2)	
Extraction complete but not yet landfilled (-1)		Post Operational (1)	
Not yet implemented (-1)			

3. Proximity

Within 250 m from residents (1)	
Site entrance more than 100 metres from classified road (1)	
Within 100m from sensitive habitat (1)	
Within airport birdstrike zone (1)	

4. Other

Legal Agreement (1)		Enforcement history (total x2)	
Liaison Panel / significant public interest (1)		More than 3 current permissions (1)	
Monitored by other competent authority (-1)			

Score:	
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Annual visits required*:	
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**Annual visits required = Score divided by 2 (rounded)*

This document can be made available in large print, on audio media, in Braille or in some other languages. For further information, please contact Development Management (Monitoring and Enforcement) in the Strategic Planning group:

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