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Development Involving County Matters

Guidance Notes
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Working in Partnership with

EPOA
Essex Planning Officers Association

Essex County Council

Development Involving County Matters

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1 Introduction

1.1 The development control functions carried out by the County Council either as Mineral, Waste or County Planning Authority are a statutory duty operating within a complex legal framework, similar, if not identical in parts, to the statutory framework for the development control functions carried out by the District/Borough Councils in Essex. The County Council deals with planning applications broadly relating to waste and minerals. The detailed classes of county matters are set out at Schedule 1 of the 1990 Act and in the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 and are further explained in detail in this document. In the case of enforcement, again the county's legal framework for its enforcement powers is similar to that of a District/Borough Council, however it can exercise the powers only in relation to 'county matters'.

1.2 This document seeks to clarify what is a 'county matter' for the purposes of the Act as well as provide guidance to both District/Borough and County planning officers to assist in resolving cases where it may not be clear who the relevant planning authority is.

2 What is a 'County Matter'?

2.1 Essex County Council is the responsible planning authority for county matters – i.e. those relating to minerals and waste. Planning Applications for such development should be made direct to the County Council. Details of the county matter planning application process, including application and validation forms can be found at www.essex.gov.uk. County matters are defined by statute and listed in:

- Schedule 1 of the Town and Country Planning Act 1990 [1], and:
- Town and Country Planning (Prescription of CountyMatters) (England) Regulations 2003.

2.2 Guidance is also given in MPS1 (Planning and Minerals) and PPS10 (Planning for Sustainable Waste Management).

1 As amended by the Planning and Compensation Act 1991

3 Minerals

3.1 In summary, Schedule 1 of the Act defines 'mineral' related county matters as:

a. the winning and working of minerals;

b. the erection of any building, plant or machinery used in connection with the winning and working of minerals or for the treatment or disposal of minerals on land adjoining mineral workings;

c. the erection of any building, plant or machinery used in connection with the grading, washing, grinding or crushing of minerals

d. the erection of any building, plant or machinery (or use of land) for any process of preparing or adapting for sale of any mineral or the manufacture of any article from a mineral where:-

   i. the development is on or adjoining the mineral working;

   ii. the mineral is brought from the mineral working by a pipeline, conveyor belt, aerial ropeway, or similar plant or machinery, or by private road, private waterway or private railway.

e. the use of land for any purpose required in connection with rail or water transport for aggregates (including manufactured aggregates, slags fuel ash or mineral waste) and the erection of associated buildings, plant and machinery;

f. the erection of buildings, plant or machinery for the coating of roadstone, producing concrete, concrete products or artificial aggregates, where:

g. The development is on land forming part of or adjoining a mineral working, or;

h. The development is on land forming part of or adjoining land used in connection with the rail or water transportation of aggregates.

i. Searches and tests for mineral deposits (and the erection of associated buildings, plant and machinery);

j. Depositing of mineral waste;

k. Cement Works;

l. Any development, on a current or disused mineral site or current or disused landfill site which would conflict with or prejudice compliance with a restoration condition imposed in respect of the mineral working.

(see Appendix 1 for a full transcript of Town and Country Planning Act 1990, Schedule 1 Local Planning Authorities: distribution of Functions)

What are 'Minerals'?

3.2 In the UK, ‘minerals' are defined in Town and Country Planning legislation as ‘all substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than for sale.’ In Essex, minerals found and won from the ground are brickearth, chalk and clay with the vast majority being sand and gravel, collectively known as ‘aggregate’. Specific information on the Essex geology can by found in the Essex Minerals Local Plan (adopted 1996).

3.3 Aggregates are raw materials that are used to make construction products such as lime, mortar, asphalt and concrete. Specifically aggregates are defined as “a granular material used in construction”. Aggregate may be natural, manufactured or recycled.” (European Standard BSEN 12620:2002). As stated, in Essex the main primary aggregates are land won sand and gravel. Recycled aggregates in Essex are largely derived from construction and demolition waste. Other aggregates are imported into the county, such as hard rocks mined elsewhere in the country.

4 Waste

4.1 Waste related development is again defined by statute in the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 which came into force on 28 April 2003. A county matter for waste related development is as follows:

i. the use of land, the carrying out of building, engineering or other operations, or the erection of plant and machinery used or proposed to be used, wholly or mainly for the purposes of recovering, treating, storing, processing, sorting, transferring or depositing of waste;
ii. the use of land or the carrying out of operations for any purposes ancillary to any use or operations specified above, including the formation, laying out, construction or alteration of a vehicular access to any public highway.

4.2 Consideration of whether a development represents 'waste' development ultimately is a matter for the courts, however PPS 10 provides some guidance, although the following list is not exhaustive:

a. metal recycling sites;

b. energy from waste incineration and other waste incineration;

c. landfill and landraising sites;

d. landfill gas generation plant;

e. pyrolysis / gasification;

f. material recovery / recycling facilities;

g. combined mechanical, biological and/or thermal treatment;

h. in-vessel composting;

i. open windrow composting;

j. anaerobic digestion;

k. household civic amenity sites;

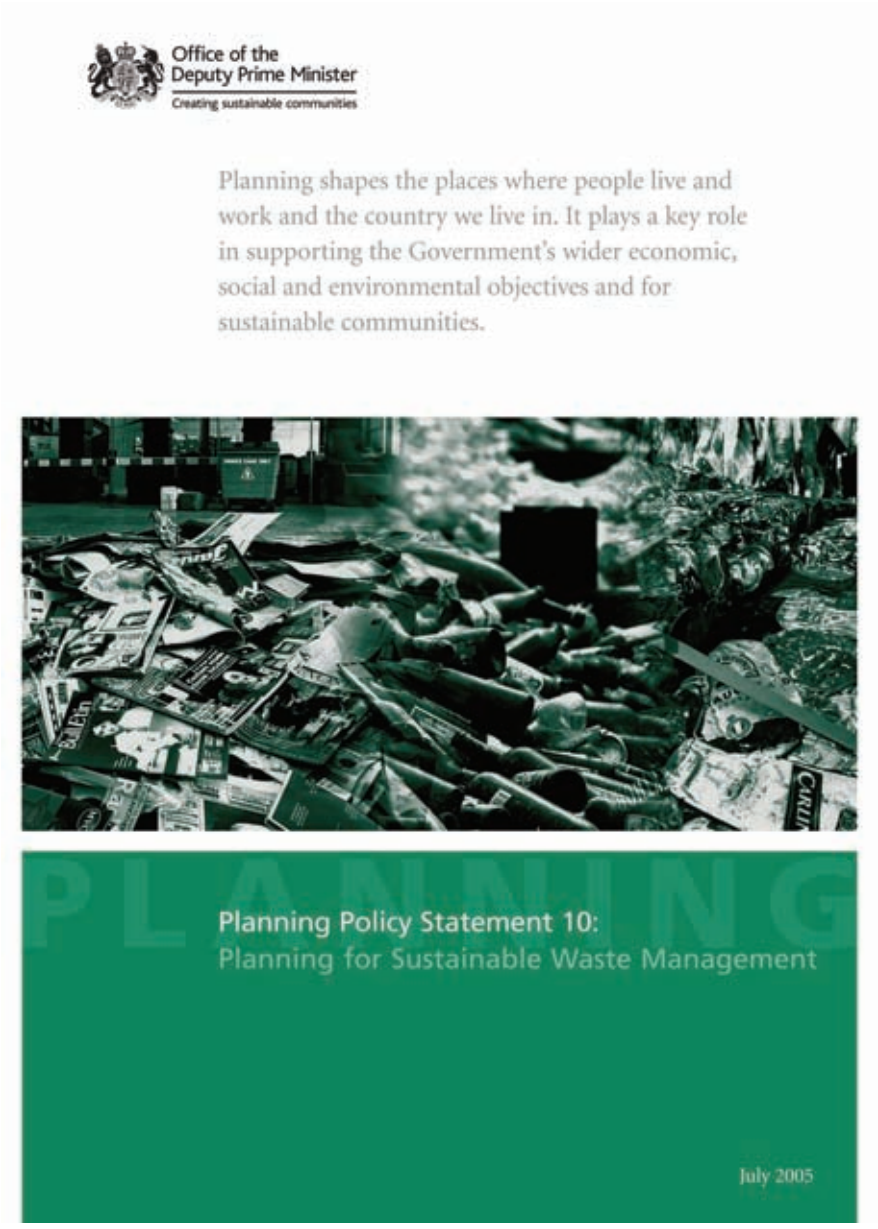
l. transfer stations;

m. sewage treatment plants;

n. dredging tips;

o. storage of waste;

p. recycling facilities for construction, demolition and excavation waste.



4.3 If in doubt, officers of the County Council will be able to provide a professional opinion. Local Planning Authorities are required to consult Waste Planning Authorities on any application which could materially conflict with or prejudice the implementation of a relevant county policy [(2)].

What is 'Waste'?

4.4 "Any substance or object the holder discards intends to discard or is required to discard" is Waste as defined under the Waste Framework Directive (European Directive 2006/12/EC). Once a substance or object has become waste, it will remain waste until it has been fully recovered and no longer poses a potential threat to the environment or to human health. From this point onwards, the waste ceases to be waste and there is no longer any reason for it to be subject to the controls and other measures required by the Directive.

4.5 Ultimately, whether a material is actually waste, is a matter for the courts to determine. However, where the person who deposits the material be depositing it for the purpose of its re-use, the true act is not one of discarding but of re-use. If the primary intention is to discard the material a secondary intention, to re-use it, would not prevent the material being waste until the secondary intention was implemented. (*Wyatt Bros (Oxford) Limited v. Secretary of State for the Environment, Transport and the Regions and Oxfordshire County Council - [2001*])

4.6 "*The Definition of Waste: Development Industry Code of Practice (ContaminatedLand: Applications in Real Environments (CL:AIRE) 2008*)" attempts to define whether materials are classified as waste and in this respect sets out a number of factors to consider. One factor is that the material must be suitable for use:

"Suitability for use means that a material must be suitable for its intended purpose in all respects. In particular, both its chemical and geotechnical properties have to be demonstrated to be suitable, and the relevant specification for its use must be met. Suitability of use also includes consideration of the effect that the material may have on the environment.

Certain excavated materials may be suitable for their intended use in the proposed development without any treatment at all. If they are used in that way those materials are unlikely to be waste. For example some materials may be assessed as being suitable for direct use, e.g. engineered backfill beneath cover layers, capping layers, buildings and hard standing or for site re-grading. Use for the purposes of reclamation, restoration, landscaping or improvement of land may fall within this category. Landfilling or disposal does not. Where reclamation, restoration, landscaping or improvement of land is carried out on the same site as excavation, the materials used for those purposes are unlikely to have been discarded and so do not become waste." (CL:AIRE))2008).

2 See Schedule 1 para 7 of the T&CP Act 1990 as amended by schedule 6 para 16(4) and the Planning and Compulsory Purchase Act.

4.7 Another relevant factor quoted is:

"Materials should be used in the quantities necessary for that use, and no more. The use of an excessive amount of material will indicate that it is being disposed of and is waste." (CL:AIRE))2008).

4.8 It is worth noting that 'topsoils' are generally not considered to be waste, however developers will often claim that the intention is to import 'topsoils', 'subsoils', 'soils' or 'spoil' when the actual intention is to import inert waste material where the original holder of that material has 'discarded' in accordance with the above definition.

Action: When a development involves the importation of 'soils' or 'spoil', if the District/Borough Council is unsure whether genuine 'soils' or inert waste would be imported, the District/Borough Council should liaise with the Waste Planning Authority.

5 County or District/Borough - Which Authority?

5.1 To protect planning permissions from procedural irregularities, it is a matter of law under S.286 of the Act that the validity of a planning consent issued by a local planning authority cannot be challenged on the ground that it should have been issued by another local planning authority. Conflicts regarding "county matters" are rare, but in *R v Berkshire C.C., ex-parte Wokingham D.C. 2/7/96,* the Court of Appeal held that a planning application for a waste transfer station and 10 light industrial units was a county matter. The court rejected the district council's challenge which had been made on the basis that the 10 industrial units were not a county matter and therefore the county council had no jurisdiction to determine the application. The court held that where the scheme contained a ***substantial element*** which was a county matter, this determined the overall nature of the application and that the County Council was the appropriate planning authority (*Development Control Practice – 2008*).

5.2 Where a mineral to be extracted would be a necessary by-product, i.e. a foundation excavation, or the waste to be imported is a necessary requirement to that development, i.e. a sub-base to floor ground stabilising, and as such is wholly subordinate and ancillary to that development, this is not considered to be a county matter. Where any proposed mineral extraction or waste importation is of such a scale that a separate operation would be created in its own right, this would require a separate application to the County Council. It is not always clear whether the scale of the activity would constitute development in its own right, however judgement on fact and degree as well as the primary purpose of the development (being, for example waste disposal or mineral extraction and not engineering) would need to be made. Determining the presence of a separate mineral/waste element of a proposal should be the subject of consultation between the District/Borough and the County Council.

Landraising Projects - Golf Courses, Earth Bunds, Noise Attenuation Mounds etc.

5.3 Since the introduction of the Landfill Tax, companies have had to pay tax on the waste that they dispose of at landfill sites that are controlled by a waste management licence or permit (regulated by the Environment Agency). Some developments, however, have been exempt

from waste management licensing – e.g. certain recreational projects – and were accordingly exempt from the landfill tax. If inert waste was being used to facilitate a land reclamation or improvement project, such as a golf course development, it would have normally been exempt from licensing and therefore would have avoided landfill tax. Naturally, the absence of tax liability lead to a marked increase of such developments taking place. In April 2008, however new regulations came into force [3]which now stipulate the restrictive parameters covering waste permitting exemptions [4]. For exempt activities, whilst planning permission would still be required, there would be generally less control on the material being imported to the site, as no environmental permit would be in place, although exemptions can be revoked if harm to human health or the environment takes place [5].

5.4 Nationally local planning authorities are granting planning permission for golf courses (and potentially other large-scale redevelopment) without properly considering whether the landscaping proposals are needed for the development or whether the associated importation of construction and demolition wastes is for the purpose of 'recovery' (associated with a genuine use in construction) or is for the 'disposal 'of waste on land i.e. landfill.

5.5 The relevant planning authority to determine these types of application could be either the District/Borough or County Council depending upon the detail of the development. The test of whether a development involving the importation of materials is a district or county matter depends fundamentally on whether the proposal constitutes a 'waste disposal activity' (change of use) or is an engineering operation (operational development). The County Council would be required to deal with the former as Waste Planning Authority and the relevant District/Borough Council with the latter as Local Planning Authority.

5.6 PPS 10 states that difficulties may arise in respect of applications that are properly to be decided by a district planning authority but which involve the use of large amounts of engineering fill for such purposes as levelling or landscaping of sites or the construction of bunds or embankments. In such cases, it would be appropriate to question developers about the purpose of certain types of proposed development.

5.7 Sometimes it is not always clear whether a development is operational development or material change of use. From cases such as *Northavon District Council v. Secretary of State for the Environment(1980) P. & C.R. 332 and Macpherson v. Secretary of State for Scotland1985 S.L.T. 134* it would seem that it depends on whether the primary purpose is the operational development or the use of the land for waste disposal. In *Northavon Donaldson L.J*. summed up the issue as being whether "the object of the exercise was genuinely to improve the quality of the land and not to make money out of providing a last resting place for rubbish". The problem is that sometimes the purpose may be both to carry out operational development and to make money in the course of the exercise by using waste. Another relevant case in this respect is *Wyatt Bros (Oxford) Limited v. Secretary of State for the Environment, Transport and the Regions and Oxfordshire County Council - [2001*]) where the Inspector held that the primary purpose was waste deposit rather than golf course construction and so the material was waste. In *Golf*

3 The Environmental Permitting (England and Wales)Regulations 2007 came into force on 6 April 2008.
4 See Schedule 3 Part 1 'Exempt Waste Operations: descriptions of The Environmental Permitting (England and Wales) Regulations 2007.
5 It is proposed that revised exemptions will be introduced in October 2009, possibly setting out more restrictive parameters for waste exemptions.

Operations Limited v First Secretary of State ex p Northamptonshire County Council [2005] EWHC 2218 the development was labelled golf course formation but due to the import of waste was properly dealt with by the County Council as a county matter.

5.8 Normally for golf course proposals where 'material' is to be imported, most developers approach district/borough councils in the first instance. The District/Borough Council may have less experience in the consideration of the wider issues of waste planning. The quantity/volume amount of materials proposed to be imported and deposited (often identified from the proposed contour/level drawings) for a development would provide an indication on the scale of that development, and in turn determine which is the most appropriate planning authority for its determination and the level of consultation required. This is a grey area in planning terms as a judgement will have to be made on whether the predominant purpose of the development (or substantial element) involves either waste disposal (for its own sake) or engineering. Matters of fact and degree including scale, form, volume etc are all relevant considerations. It is also important that 'multi-phased' developments are also considered. A development may be submitted as a proposal in singular phases - i.e. phase 1 of a 6 phase proposal may involve the importation and deposit of, say, 50,000m^3 of inert waste, with future phases reserved for future applications. Merely because the development (a single phase) is relatively small scale, does not necessarily indicate that any application lodged should be properly considered to be a District/Borough matter. Such an application would still involve the importation and deposition of waste.

5.9 The Government is seeking to encourage the 'recovery' of waste including its use in construction. The overriding objective is to ensure that waste recovery and disposal are carried out so as to prevent harm to human health or pollution of the environment in accordance with Article 4 of the Waste Framework Directive (currently under revision but with Article 4 being re-enacted).

5.10 The revised Waste Framework Directive [6] defines recovery:

> *"Recovery" means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would have otherwise been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or wider economy*.

5.11 This definition consolidates case-law by the European Court of Justice on the distinction between recovery and disposal (the Abfall test). This distinction is sometimes referred to as the 'substitution' principle because in waste recovery operations the waste is used as a substitute for a non-waste raw material that would otherwise be used - so conserving natural resources. Any deposit that does not constitute recovery - which includes the re-use and recycling of waste - is considered a waste disposal operation. The disposal in or on land may be subject to additional controls of the Integrated Pollution Prevention and Control Directive and the Landfill Directive depending on the size and scale of the operation.

6 At December 2008, yet to be transposed into English law.

5.12 It is felt that developments of the scale of recent examples (generally in excess of 100,000 tonnes) would not have been undertaken if the material used to construct the landscaping was not waste. Therefore, it is considered they are unlikely to constitute recovery operations [7].

5.13 There have been cases where district councils have determined applications for golf courses, landscape bunds, noise attenuation mounds etc which in fact were large scale waste disposal projects that should have been handled by the County Council because of the volume of waste materials involved (being clearly above what was necessary to bring about an improvement); and cases where districts have failed to carry out proper consultation with the County Council. As stated, the re contouring of a golf course could be an engineering operation for a district/borough to consider as an improvement project. Alternatively, the scale of the project may have much broader ramifications, and the County Council would need to form a judgement on whether or not the imporation of materials required for the total contouring proposed is waste disposal (rather than engineering) and in turn if the development should be treated as a waste planning application.

5.14 As a waste planning application, issues such as the diversion of inert waste materials from other sites (such as quarries that require such material for restoration), environmental impact and waste planning policy would all need to be taken into account. For example, such an application would need to be considered against the policies contained within the Essex and Southend Waste Local Plan (2001), which amongst other matters seeks to ensure that there would be a restoration need for such a development (Policy W9B). Any application would therefore need to demonstrate that amount of material imported and deposited would be the minimum necessary to bring about any alleged improvement, not being at a scale beyond that necessary for restoration. Therefore, it is essential that the County Council is involved at the pre-application stages and should be consulted at the application stage, preferably before the validation stage to help determine whether a proposal is in fact a county matter.

5.15 Defra has recently completed a *Consultation on revised exemptions to environmental permitting* that proposes to significantly restrict the scope of the current exemption from the need for an environmental permit. It is proposed that revised exemptions will be introduced in October 2009. This will result in large-scale landscaping developments requiring an environmental permit and operators will be subject to much greater regulatory control by the Environment Agency. It is likely that these changes will make such projects less attractive.

5.16 The creation of mounds andembankments is normally classified as an engineering operation, and *Ewen Developments Ltd v SOS & North Norfolk DC 1980* is normally cited. Here, at a caravan site, it was held that the creation of embankments could be an engineering operation if substantial. In this case they were not other means of enclosure and therefore not Part 2 permitted development *(Development Control Practice – 2008).* The following cases are of note *(Development Control Practice – 2008):*

- An enforcement notice required the removal of earth bunds adjacent to a large area of disused open grassland formerly used by the Greater London Council as a sports ground. Under ground (c) it was argued that the bunds were formed to provide security and were

7 CLG Letter to Chief Planning Officers dated 20 January 2009 (attached at Appendix 3)

a means of enclosure under Schedule 2, Part 2, Class a of the GPDO. A council argued on the basis of the judgement *in Ewen Developments Ltd v SOS & North Norfolk DC 1980*, that the bunds were engineering operations and not a means of enclosure. An inspector agreed that they did form a means of enclosure due to their low height and visually discreet nature. However the maximum height of the bunds exceeded 2 m adjacent to a highway and were thus not permitted development. Under ground (a) the bunds were effective in preventing fly tipping and whilst they were intrusive in the green belt, there was potentially greater harm from increased tipping. This amounted to a very special circumstance justifying temporary retention for 5 years (Epsom & Ewell 10/11/99 DCS No. _052-451-121_).

- An enforcement notice required the removal of earth bunds and gates at a racing circuit. Under ground (c) it was argued that the bunds were a means of enclosure and permitted under Schedule 2, Part 2 Class A of the GPDO. In accordance with *Ewen Developments v SOS 1980*, the "*eiusdem generis*" rule applied in that where legislation refers first to a specific item and then a general class, the latter must be identified by reference to the former. Thus "gate, fence, wall or other means of enclosure" relates to the class identified by the former. The bunds whilst containing a car park and providing noise attenuation, did not look like a gate, fence or wall. Under ground (a) whilst security was a problem, the bunds did not provide any greater security than a 2 m. high fence which would be less intrusive. The functional needs of the track did not justify their retention. Similar comments applied to the gates and posts which contributed to the countryside intrusion (Arun 21/05/99 DCS No. _053-760-561_).
- In an unusual court case, *Lovejoy v SOS & Caradon DC,* an appellants contention that a boat used for residential purposes was a moveable structure which was permitted to remain for the duration of the construction of a bund was rejected. The court decided that the bund was not development permitted by Part 2 Class A of the GPDO because it would not enclose any land. Consequently, the boat was not a moveable structure permitted for the duration of the works by virtue of Part 4 because the works were not permitted development and did not have planning permission. [8]

Action: That Essex District/Borough Councils consult the Waste Planning Authority on any application (or pre-application discussion [9]) that may involve the importation of materials to raise land levels. Examples may include recreational, habitat, land reclamation, amenity or landscaping projects which may include, but not exclusively, golf courses, landscape mounds, anti-trespass bunds, noise attenuation mounds, motor-cross tracks etc.

The Afteruse of Mineral/Landfill Sites

5.17 Applications for proposals for the afteruse of mineral/landfill sites which are not related to agriculture, forestry or amenity (see MPG7) are not county matters and should be the subject of a separate planning application to the relevant District/Borough in whose are the site falls. Nevertheless, it is right for the County Council in considering an application for new

8 Summaries of Cases extracted (with permission) from Development Control Practice Notes online version 2008.**Development Control Services Ltd** (DCS) Haymarket Publishing Group. Full Cases available under reference no. from Development Control Casebook.

9 With the advance consent of the prospective developer if pre-application discussions are being held in confidence.

extraction/landfill to investigate the suitability of the afteruse as far as it affects the landform/restoration proposals. The County Council will, however, stop short of giving permission for afteruses except in the cases of agriculture, forestry or amenity. Where the proposed afteruse will dictate the landform, the prior agreement of the District/Borough Council needs to be established before the development is approved by the County Council, as Mineral or Waste Planning Authority.

5.18 Nevertheless, under the provisions of Schedule 1 of the 1990 Act [10] a number of county councils have dealt with applications for non-agricultural/amenity/forestry afteruse proposals, such as large scale housing developments or other development that would normally be dealt with at district level. The reasoning for this approach is that the proposed development was considered to conflict with the restoration of a former or existing mineral site and therefore a county council could rightfully determine a 'built' development application on the site.

5.19 One example, not in Essex, was for a housing scheme that would impact on the restoration of an existing mineral site, where the land contours of the restored mineral site were proposed to be re-levelled to accommodate the housing. This issue was dealt with as a revision to the approved restoration scheme at county level as an application under S73 of the Act, whilst the housing development was dealt with, as a full application, by the district. A S106 agreement ensured that, if the housing development did not take place, then the site would be returned to nature conservation, as originally proposed in the mineral permission. On this occasion the County Council in question considered it necessary to devolve it powers under Schedule 1 of the Act to the district council, however it is understood that the devolution of such powers can only be granted by the full council [11].

Action: Should a proposal be for an afteruse, and this would interfere/conflict with a restoration /aftercare condition attached to a mineral/landfill permission, then two applications may need to be made - one to the Borough/District for the use proposed and the other to the County Council for the amendment/variation to the approved aftercare scheme. The County and District/Borough should consult each other to ensure co-ordination of the respective decisions.

Windfall Mineral Sites (Reserviors and Borrow Pits)

5.20 **Windfall Mineral Sites (Reservoirs and Borrow Pits):** Applications for reservoirs, either for agricultural irrigation reservoirs or reservoirs for water supply, and borrow pits for road or other projects have historically been dealt with by the County Council where the development involves the extraction and exportation of mineral, normally sand and gravel. Such developments are assessed as non-preferred extraction sites or 'windfall' sites. There is a general presumption

10 Schedule 1 of the 1990 Act states "*the carrying out of operations in, on, over or under land, or a use of land, where the land is or forms part of a site used or formerly used for the winning and working of minerals and where the operations or use would conflict with or prejudice compliance with a restoration condition or an aftercare condition.*"

11 Under Section 101(1)(b) of the Local Government Act 1972.

against such sites except where the reserves comprising the landbank are insufficient and/or there is some over-riding justification or benefit for the release of the site and the proposal would be environmentally acceptable.

5.21 An agricultural reservoir, for example is used to store water which can be drawn down during the summer for the irrigation of crops. In the winter water is replenished for use during the next summer. The County Council would deal with such a proposal as a mineral extraction development provided that the mineral is exported from the site to create the reservoir. If the reservoir is stocked with fish (as a fishing lake), it cannot be used for irrigation and so is not fit for purpose. Under these circumstances, it would be considered that a change of use would take place and that it would be proper for the district council to consider whether a planning application would be required to regularise the development or enforcement action should be taken if expedient to do so. Clearly, once mineral has been extracted from the land and a reservoir created (provided that the need has been justified at the time of the original application) for any other use of the water to subsequently take place, such as a fishing lake, this may not be in accordance with mineral plan policy. However, each application should rightfully be determined on it own merits and the final decision is likely to rest with the District Authority, being a planning matter beyond the planning control of the County.

Action: For applications where the afteruse of a windfall mineral site is proposed to change (e.g. an agricultural reservoir to a fishing lake) the District/Borough should consult the County Council as Mineral Planning Authority. In such circumstances the County Council may object to an alternative after-use given that the original overriding justification for the mineral extraction was agricultural need. Nonetheless, purely from a monitoring position, the MPA should be consulted.

Minerals/Waste and Agricultural Permitted Development

5.22 In sec.55(3)(b) of the 1990 Act the deposit of waste materials on land is specifically stated to be a material use of that land. However, Part 6 Class A of the GPDO, relating to holdings over 5 hectares, permits any excavation or engineering operations reasonably necessary for the purposes of agriculture within an agricultural unit, subject to the normal criteria attendant upon the class. One of these states that no waste materials shall be brought onto the land from elsewhere for deposit except for use in work described in Class A(a) (relating to farm buildings) or in the creation of hard surface, where the materials so brought are incorporated forthwith into the buildings or works in question. Part 6 Class A takes outside of permitted development any works which relate to the extraction of removal of minerals where those minerals are taken off the unit.

5.23 Class B relating to agricultural units between 0.4 and 5ha permits the deposit of waste, but subject to the condition that such waste materials cannot be brought onto the land from elsewhere unless required for building works, roads or hardstandings. The Class does not permit any excavations.

5.24 Class C refers to the winning and working on land held or occupied with land used for the purposes of agriculture of any minerals reasonably necessary for agricultural purposes within the agricultural unit of which it forms part. This class is conditional upon none of the mineral being moved off the farm or being nearer than 25m to a trunk or classified road.

5.25 Thus, the circumstances in which farmers may alter the shape of land either by excavation or deposition without the need for planning permission are tightly circumscribed, and even the Class A relaxation for larger holdings are subject to notification and call-in procedures. Even if it is established that no materials have been moved on or off a farm as described above, it is still necessary to show that works have been carried out for a *bona fide* agricultural purpose for them to be permitted development (Development Control Practice – 2008).

5.26 Hardstandings at agricultural holdings are permitted development by reason of Part 6 of the GPDO subject to the usual conditions. Class A, relating to holdings of more than 5ha allows any engineering operation. Class B relating to units of less than 5ha allows the provision of a hard surface. The Classes allow the bringing in of waste from outside the unit provided that it is incorporated into the hard surface, but a limit of 465sqm of area covered is applied. If the area to be covered exceeds 0.5 ha the prior notification procedure applies to development otherwise allowed by Class A. If a farmer, upon the pretext of constructing hard areas for agricultural purposes, in truth uses his farm for the purpose of tipping, then that is a development which requires planning permission. The farmer's activity may constitute both an operation and a change of use. It may therefore fall within both limbs of the definition of development set out in section 55(1) of the 1990 Act. For the purpose of Class A of Part 6 of Schedule 2 to the GDPO it is necessary to determine whether a farmer's deposition of waste materials on his land was reasonably necessary for the purposes of agriculture. The correct approach for answering that question was “an objective question for the determination of the Inspector having regard to the particular needs of the particular unit for the particular development.” [(12)]

Waste Management Development - B2 or Sui Generis?

5.27 **Waste Management Development - B2 or Sui Generis?:** More operators are seeking to operate waste management (recycling/recovery or transfer) facilities under existing B2 General Industrial uses, rather than seek express planning permission from the Waste Planning Authority.

12 This test was formulated by Judge Rich in Richard Scott v. SSETR[2000] J.P.L. 833 at 837. It was in substance the test applied by the Divisional Court in Northavon District Council v. SSE[1980] 4 P. & C.R. 332.

5.28 Under The Town and Country Planning (Use Classes) Order 1987 (S.I. 1987 No. 764) a change of use within the same class would not constitute development under Section 55 of the Act and as such would not require a separate planning consent for a change of use within the same or lower class. The main driver behind the principle of the Use Classes Order is that where changes of uses of land within the same class would not incur any further detriment to the local amenity or the environment beyond that impact experienced from the current use being operated on the land then owners of the land will have sufficient flexibility to make minor changes to the permitted use of the land.

5.29 Waste transfer activities often cause considerable difficulty when it comes to determining whether development has occurred by reason of being materially different from previous uses of land. The type of sites suitable for this use tend to have a chequered history, and often have been utilised for a variety of ill defined and overlapping activities such as haulage or skip hire depots, scrap yards, and other open storage/industrial uses, some of which may be unlawful and others not. In such cases definition of the correct planning unit may be a particular problem, and in dealing with previous *sui generis* uses, the concept of intensification may come into play. The encyclopaedia of planning law [13] makes some commentary on the determination of what constitutes a material change of use. It is therefore necessary to consider whether a change of use in the land would take place. A number of recent cases highlight conflicting opinions on whether a Waste Management Development (not involving the final demolition of waste) could operate under B2 of The Use Classes Order. A recent detailed paper has been prepared [14] stating that cases can be viewed either way. The conclusions of the paper are as follows:

5.30 *Where a screening opinion for a development under the EIA Regulations suggests that the potential impact from the proposed change of use is insufficient to require an Environmental Statement to be submitted, then that development where it relates to a waste management facility exempt from the need for IPPC and used for the importation, storing, handling, crushing, shredding, chipping, screening, or sorting but excluding any permanent deposit of waste materials consisting of metal, fabric, wood, paper, cardboard, plastic, hardcore, concrete from construction and demolition waste where that use is carried out within an existing building with an existing B2 General Industrial use, then that use of land could be considered to fall within the same B2 class and would not constitute development* (Note that a scrapyard, or a yard for the storage and distribution of minerals or the breaking of motor vehicles would be sui-generis, and not B2, as defined under Article 3(6)(g) of the Use Classes Order).

5.31 *Conversely, for any new building or change of use of land, where such a screening opinion is sufficient to require the submission of an Environmental Statement where previously it did not, or the facility would require an IPPC from the Environment Agency where previously it was exempt, then that would be considered a material change of use and would require the submission of a new application for permission to the Waste Planning Authority.*

13 Sweet and Maxwell

14 "Can a B2 General Industrial Use include a Change of Use of Land to a Waste Transfer Station or Materials Recycling Facility?" - Doug Walker, Enforcement Officer, Staffordshire CC

5.32 *If there is no material change of use of the land from that which already exists within a B2 General Industrial use permitted on the land, even where that includes other ancillary mixed B8 or B1 uses, then there can be no development as defined in S.55 of the Act requiring a new planning permission.*

5.33 Acting on advice and statute, whilst accepting that waste activities related to tipping or incineration are '*sui generis*' under the Use Classes Order, Waste Management or Waste Transfer Facilities can be included within the B2 General Industrial Use class of the Town and Country Planning (Use Classes) Order 1987 (S.I. 1987/No. 764) as amended, although each case should be considered on its own merits.

5.34 Nevertheless, every change of use involving *sui generis* uses still has to be subject to the normal materiality test. This viewpoint was taken in (Derbyshire CC 19/2/03 DCS No. 030-716-302) which involved a *sui generis* materials recycling facility from a *sui generis* use involving the screening and stockpiling of coal. An inspector concluded that the fact that two uses were *sui generis* did not of itself necessarily mean that they were materially different. The following waste uses have been accorded *sui generis* status at appeal or by the courts.

- Waste transfer/recycling depot (Rochdale BC10/3/92 DCS No. 053-188-711), (Humberside CC18/10/93 031-509-992), (Fife Council 28/6/99 041-436-724) and (Derbyshire CC 19/2/03 DCS No. 030-716-302), (Bridgend 5/1/99 039-990-754) [15] *(Development Control Practice – 2008).*

Action: For B2 permissions to be granted by the District/Borough, consideration should be given to a condition restricting the use to that applied for. When developers seek a waste management development under the exiting use class (e.g. B2), the County Council as Waste Planning Authority should be notified to form a view of whether a change of use would take place and whether express permission would be required as a waste related (sui generis) development. Where the new use would be for waste development and this would need planning permission, the relevant planning authority is likely to be the Waste Planning Authority, even if the existing site benefits from a historical B2 designation. In all cases the Waste Planning Authority will seek background and site history information from the District.

The County Council's own Waste Development - Regulation 3 Applications

5.35 Waste Disposal Authority sites such as recycling centres for household waste (formerly civic amenity sites) are able to dealt with under the procedures laid down in the Town and Country Planning General Regulations 1992, e.g. by the Waste Planning Authority under Regulation 3 of the aforementioned regulations.

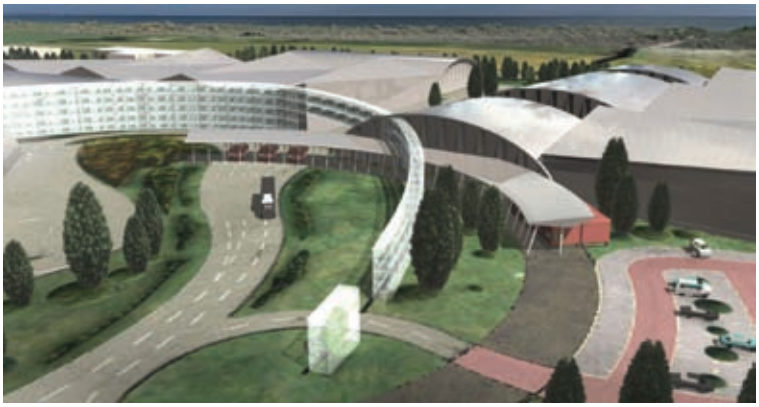
5.36 For mineral and waste development carried out by District Councils in respect of carrying out their own statutory functions, the local planning authority is able to deal with such applications itself under the procedures laid down in the Town and Country Planning General Regulations

15 Summaries of Cases extracted (with permission) from Development Control Practice Notes online version 2008.**Development Control Services Ltd** (DCS) Haymarket Publishing Group. Full Cases available under reference no. from Development Control Casebook.

1992 (i.e. Regulation 3), however the County Council, as mineral and waste planning authority, will be able to provide specialist advice on consideration of the development as well as advise on the appropriate use of planning conditions.

5.37 Mineral and waste development proposals by a District/Borough planning authority are not county matters, although the county council should be consulted on such proposals. Again, such applications are able to be dealt with under Regulation 3 of Town and Country General Regulations 1992 (explained in Circular 19/92). The Regulations set out two different procedures a) where a local authority is to be the developer and b) where a local authority is not to be the developer. In the circumstance where a local authority is to be a joint developer of its own land, the procedure falls within a) where the interest in developing the land is significant in terms of its financial commitment; and b) where this interest is not significant.

5.38 Where a local authority is to be the developer or significant joint developer the procedure to be followed is the passing of a resolution, the undertaking of specified notification and publicity measures and the entering of the matter in a planning register. After these steps have been undertaken a further resolution is required affirming intention to proceed, and at this point planning permission is deemed to be granted. This permission enures only for the benefit of the authority and may not be made by officers or members who are responsible for the management of land and buildings the subject of the application.



5.39 Where a local authority is not to be the developer an application has to be made in exactly the same fashion required of any developer. If the development is a county matter, the application would have to be made to the County Council. If the County Council is the developer, the application would have to be made to the District/Borough Council, unless the development is a county matter. This procedure ensures that all the relevant statutory procedures relating to publicity and consultation are followed, and that at the end of the day a decision is made formally by the appropriate planning committee of the council or the full council itself. Such a permission runs with the land to which its refers.*(Development Control Practice – 2008).*

6 Key notes - Mineral Development

- Applications for proposals where the afteruse of mineral/landfill sites is not related to agriculture, forestry or amenity are not county matters;
- Should a proposal for an afteruse conflict with a restoration/aftercare condition attached to a mineral/landfill permission, then two applications would need to be submitted;
- Built or other development (temporary or permanent) on an operational site, for a proposal not related to the mineral/waste operations, would not be a County matter (unless it potentially conflicted with an aftercare or restoration condition);
- Where a mineral is to be extracted as a by-product and as such is wholly subordinate and ancillary to that development, this is not considered to be a county matter. Where any proposed extraction or importation is of such a scale as to establish a separate operation altogether, the extraction element would be a county matter;
- In the case of agricultural reservoirs, the principal need has to be established to determine the type of development. There are essentially two types of this form of development:

1. Excavation of mineral with afteruse as reservoir, and;

2. Agricultural reservoir with mineral as by-product.

The first is a county matter. The second strand may or may not be a county matter dependant upon what is done with the mineral post-excavation and its final destination. If the mineral is kept on site and used in engineering operations at the reservoir (stabilising the banks etc), this is not a county matter. However, if the material is being stored on site (stockpiled), processed or treated on site in any way, or being exported from the site, then this is a county matter.

7 Key Notes - Waste Development

- Planning Policy Statement 10 states that all planning applications relating to the use of land (and buildings) or the erection of buildings, plant or machinery for the purposes of waste management are ‘county matters’ and are to be determined by the County Council.
- There is no definition of waste in the Town and Country Planning Act 1990. The term ‘waste’ is defined in the Waste Framework Directive (European Directive 2006/12/EC) as “any substance or object the holder discards intends to discard or is required to discard";
- Applications for hazardous substances consent should be to the County Council only where the land is used for mineral working or for waste disposal. In all other cases, the Borough / District are the appropriate hazardous substances authority;
- Leachate treatment plants and landfill gas generator operations, at or adjacent to waste operation sites, are county matters where they comprise part of the management scheme for the operations and/or where they would affect the approved restoration scheme for the site;
- Difficulties arise however in determining whether or not an object can be classified as a waste. There are also sometimes difficulties in distinguishing waste management facilities (sui generis) from general industrial manufacturing uses (B2). Each case must be determined on its own merits, however where a new waste management development is proposed the County Council is likely to consider is sui-generis and a matter for the Waste Planning Authority to determine. For all cases it is important for the County and District/Borough Council to liaise.

8 County Matter Enforcement

8.1 The allocation of functions in respect of the enforcement provisions within the Town and Country Planning Act 1990 is set out in Schedule 1, para. 11. The functions in general would be exercisable by the District/Borough Planning Authority subject to the following:

i. in a case where it appears to the District Planning Authority that enforcement would relate to a County matter, they shall not exercise those functions without first consulting the County Planning Authority;

ii. subject to the following paragraph, enforcement functions shall also be exercised by the County Planning Authority in a case where it appears to the County Authority that they relate to a matter which should properly be considered a County matter, and;

iii. in relation to a matter which is a County matter by virtue of any of the provisions of Schedule 1 para. 1(1)(a) to (h) the functions of a local planning authority shall only be exercised by the County Council in their capacity as the Minerals and Waste Planning Authority.

County Council Development

8.2 **County Council Development:** At Appendix 4 is a copy of the Regulation 3 Enforcement Protocol, relating to the processes of enforcement against the County Council's own development dealt with under Regulation 3 of Town and Country Planning General Regulations 1992 (e.g. school development, libraries, strategic road projects, waste recycling sites under ECC control etc).

Appendix 1 - Town and County Planning Act 1990, Schedule 1 Local Planning Authorities: Distribution of Functions

1 (1) In this Schedule “county matter” means in relation to any application, order or notice—

a. the winning and working of minerals in, on or under land (whether by surface or underground working) or the erection of any building, plant or machinery—

   i. which it is proposed to use in connection with the winning and working of minerals or with their treatment or disposal in or on land adjoining the site of the working; or
   ii. which a person engaged in mining operations proposes to use in connection with the grading, washing, grinding or crushing of minerals;

b. the use of land, or the erection of any building, plant or machinery on land, for the carrying out of any process for the preparation or adaptation for sale of any mineral or the manufacture of any article from a mineral where—

   i. the land forms part of or adjoins a site used or proposed to be used for the winning and working of minerals; or
   ii. the mineral is, or is proposed to be, brought to the land from a site used, or proposed to be used, for the winning and working of minerals by means of a pipeline, conveyor belt, aerial ropeway, or similar plant or machinery, or by private road, private waterway or private railway;

c. the carrying out of searches and tests of mineral deposits or the erection of any building, plant or machinery which it is proposed to use in connection with them;

d. the disposal of mineral waste;

e. the use of land for any purpose required in connection with the transport by rail or water of aggregates (that is to say, any of the following, namely—

   i. sand and gravel;
   ii. crushed rock;
   iii. artificial materials of appearance similar to sand, gravel or crushed rock and manufactured or otherwise derived from iron or steel slags, pulverised fuel ash, clay or mineral waste),
   iv. or the erection of any building, plant or machinery which it is proposed to use in connection with them;

f. the erection of any building, plant or machinery which it is proposed to use for the coating of roadstone or the production of concrete or of concrete products or artificial aggregates, where the building, plant or machinery is to be erected in or on land which forms part of or adjoins a site used or proposed to be used—

i. for the winning and working of minerals; or
ii. for any of the purposes mentioned in paragraph (e) above;

g. the erection of any building, plant or machinery which it is proposed to use for the manufacture of cement;

h. the carrying out of operations in, on, over or under land, or a use of land, where the land is or forms part of a site used or formerly used for the winning and working of minerals and where the operations or use would conflict with or prejudice compliance with a restoration condition or an aftercare condition;

i. the carrying out of operations in, on, over or under land, or any use of land, which is situated partly in and partly outside a National Park;

j. the carrying out of any operation which is, as respects the area in question, a prescribed operation or an operation of a prescribed class or any use which is, as respects that area, a prescribed use or use of a prescribed class.

Appendix 2 - Town and County Planning (Prescription of County Matters) (England) Regultations 2003

Made	*7th April 2003*
Laid before Parliament	*7th April 2003*
Coming into force	*28th April 2003*

The First Secretary of State, in exercise of the powers conferred on him by paragraph 1(1)(j) of Schedule 1 to the Town and Country Planning Act 1990 [16] and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement, interpretation and extent

1. - (1) These Regulations may be cited as the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 and shall come into force on 28th April 2003.

(2) These Regulations apply in England only.

Operations and uses prescribed as county matters

2. The following classes of operations and uses of land are prescribed for the purposes of paragraph 1(1)(j) of Schedule 1 to the Town and Country Planning Act 1990: -

(a)

(i) the use of land;
(ii) the carrying out of building, engineering or other operations; or
(iii) the erection of plant or machinery used or proposed to be used,

wholly or mainly for the purposes of recovering, treating, storing, processing, sorting, transferring or depositing of waste;

(b) the use of land or the carrying out of operations for any purposes ancillary to any use or operations specified in paragraph (a) above, including the formation, laying out, construction or alteration of a vehicular access to any public highway.

Revocation and transitional provisions

3. - (1) Subject to paragraph (2), the Town and Country Planning (Prescription of County Matters) Regulations 1980 [17] ("the 1980 Regulations") are hereby revoked, so far as they apply in England.

(2) Any application to which the 1980 Regulations applied which has been made but not determined on the date when these Regulations come into force shall continue to be dealt with in accordance with the 1980 Regulations.

Signed by authority of the First Secretary of State
Tony McNulty
Parliamentary Under Secretary of State, Office of the Deputy Prime Minister
7th April 2003

16 [1]
17 [2]

Appendix 3 - Letter from Deepartment of Communities and Local Government "Large Scale Landscaping Developments Using Waste" 20 January 2009

Communities and Local Government

www.communities.gov.uk
community, opportunity, prosperity

20 January 2009

The Chief Planning Officer:
County Councils in England
District Councils in England
Unitary Authorities in England
London Borough Councils
Council of the Isles of Scilly;

The Town Clerk, City of London;

The Chief Planning Officer,
National Park Authorities in England;
The Broads Authority

Dear Chief Planning Officer,

Large-scale Landscaping Development Using Waste

Ministers in Communities and Local Government have recently been made aware of cases where planning approval has been given to large-scale landscaping developments using waste, which may be wrongly classed as waste recovery operations. This practice is primarily associated with golf course development but other examples are now being noted. The cases involve planning permission being granted for such development without properly considering whether the landscaping proposals are needed for the development, and whether the associated importation of construction and demolition wastes is for the purpose of 'waste recovery' (associated with a genuine use in construction) or is for the 'disposal' of waste on land i.e. landfill. There are a number of concerns surrounding this issue, including which planning authority should consider such proposals in two-tier areas, in particular the need for closer liaison between District councils and the waste planning authority, and the need for closer liaison with the Environment Agency.

Planning Policy Statement 10: Planning for Sustainable Waste Management states that all planning applications relating to the use of land (and buildings) or the erection of buildings, plant or machinery for the purposes of waste management are 'county matters' and are to be determined by the County Council. The development of a waste facility by a district council on its own land would remain a district function. PPS10 also states that difficulties may arise in respect of applications that are properly to be decided by a district planning authority but which involve the use of large amounts of engineering fill for such purposes as levelling or landscaping of sites or the construction of bunds or embankments. In such cases, it may be appropriate to question developers about the purpose of certain types of proposed development.

Page 1

The Government's policy is to encourage the recovery of waste (which includes the re-use and recycling of waste, e.g. for construction), with an overriding objective to ensure that waste recovery and disposal are carried out so as to prevent harm to human health or pollution of the environment in accordance with Article 4 of the Waste Framework Directive. The Directive makes it clear that any deposit of waste that does not constitute recovery is considered a waste disposal operation. The disposal in or on land may be subject to additional controls of the Integrated Pollution Prevention and Control Directive and the Landfill Directive depending on the size and scale of the operation and subject to the grant of a permit by the Environment Agency.

Both CLG and Defra consider that landscaping developments of the scale of the current examples involving importing over 100,000 tonnes of waste would not have been undertaken if the material used to construct the landscaping were not waste. Therefore, given the quantity of waste being used such developments are unlikely to constitute recovery operations, but are more likely to be waste disposal operations.

If such developments *are* considered to be waste disposal operations, then in two-tier authority areas there is a clear case for the decision for applications to be considered by the waste planning authority – i.e. the County Council. In unitary authorities it is equally important that such applications are considered in the context of the authorities' planning policies for waste. Planning authorities should also ensure any proposal meets the environmental objectives of Article 4 of the Waste Framework Directive and Article 5 (establishment of an adequate and integrated network of disposal installations) and Article 7 (waste management plans) insofar as is appropriate in carrying out their functions.

If there is any doubt as to whether a proposed development constitutes waste disposal then in two-tier areas the District council should liaise closely with the waste planning authority. All planning authorities are advised to ensure they consult the Environment Agency in advance of approving these developments.

Clearly for some developments there may be a degree of judgment to be made regarding the detail and scale of the proposed development, and whether the predominant purpose of the development involves either waste disposal (for its own sake) or engineering. The quantity and volume of materials proposed to be imported and deposited for a development would provide an indication on the scale of that development, and in turn determine the most appropriate planning authority for its determination.

You will also wish to note that Defra has recently completed a consultation on revised exemptions to environmental permitting that proposes to significantly restrict the scope of the current exemption from the need for an environmental permit. This can be found at:
http://www.defra.gov.uk/corporate/consult/waste-exemption-review/consultation.pdf

Subject to the outcome of the consultation, it is proposed that revised exemptions will be introduced in October 2009.

If you have any queries, then please contact Charlotte Palmer at Communities and Local Government on charlotte.palmer@communities.gsi.gov.uk or 0207 9443865.

Yours faithfully,

Dr Stephanie Hurst
Deputy Director
Planning – Resources and Environment Policy

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Appendix 4 - Enforcement of County Council (Regulation 3) Development

Introduction

This document sets out how the County Planning Authority (CPA) would 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.

Where development is approved the CPA is obliged to ensure that all planning conditions attached to planning permissions are complied with in full. In addition, the CPA is obliged to investigate any allegation that a County Council development is taking or has taken place without the pre-requisite deemed planning permission.

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 CPA's approach is consistent and effective when deciding what action should be taken.

This protocol for Regulation 3 planning matters establishes formal procedures to enable the CPA, both the Development and Regulation Committee (the Committee) and officers acting under delegated powers to be consistent and effective in their approach. Additionally, promoting service providers would understand that should there be any breaches of planning control the CPA would take action under the terms of the protocol to remedy them.

The protocol would make the processes involved transparent, and would, if followed in full, avoid the need for ombudsman or District/Borough Council intervention.

Breaches of Planning Control

Breaches of planning control are likely to be brought to the attention of the CPA either by routine site monitoring inspections or following a complaint from a member of the public or other third party.

All complaints received from the general public would be logged on the complaints database and acknowledged within 2 working days. The complainant should, if the complaint is accepted, expect a response within *14* working days setting out how the CPA intends to deal with the matter. The matter would then be dealt with, in the first instance, in the same manner as for non-CountyCouncil development, i.e. in accordance with Development Control Enforcement Policy, Complaints Code of Practice.

Site Monitoring and Gathering of Information

The CPA has the responsibility for determining all Regulation 3 development the County Council wishes to carry out. Officers acting for the CPA may need to investigate alleged breaches of control once informed about them. In addition, in respect of planning permissions, officers may undertake routine monitoring to ensure planning conditions are met. 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.

Regulation of Breaches

The Head of Environmental Planning has delegated powers to initiate enforcement action, although matters will be referred to the Committee if a Member decision is desired. For clarity, where a complainant brings a confirmed breach of planning control to the attention of the CPA and, in officer's opinion, it would not be expedient to seek remedial action, then this would be referred to the Committee for a final decision.

Remedial Action Procedure

Initial Action: The investigating officer will, under normal circumstances, visit the site in question to determine whether or not a breach of planning control has taken place. Reference will need to be made to extant planning permissions (where they exist) and to the General Permitted Development Order 1995 to ascertain if permitted development rights exist. When necessary, District/Borough Councils will be consulted to determine if they have granted planning permission.

If no breach of planning control were found the complainant would be informed accordingly. Additionally, the local member would be informed of the complaint and the outcome of the investigation.

Follow-up Action: Upon concluding there has been a breach of planning control: negotiation would be the first step in addressing the situation. The investigating officer will discuss the situation with the relevant officer(s) acting for the promoting service provider and try to reach an agreed settlement including a timescale to carry out any remedial works, make any rectifying application, etc. Where the promoting department is willing to comply with an agreed way forward and agreed time periods, this will usually result in no further action being required.

Where remedial action is agreed to address the breach of planning control, the investigating officer will write to all parties involved setting out what has been agreed to correct the situation, including timescales.

The service provider should respond in writing stating that they are willing to carry out these works and 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 a more formal approach to resolving the situation.

At all times, any complainant would be kept informed as well as the Local Member.

Committee Involvement: Should the necessary action not be agreed, or the agreed action not be undertaken in full, then the matter would be brought to the attention of the Development and Regulation Committee for resolution.

If the Committee consider that remedial action is not necessary then no further enforcement action is required. The complainant and the Local Member would be informed accordingly.

If the Committee determine that the breach of planning control does justify remedial action, then it would also determine any necessary action to overcome the breach, and refer the matter to the relevant Cabinet Member for action. The complainant and the Local Member would be informed accordingly.

Cabinet Member Involvement

Service providers may wish to involve the relevant Cabinet Members throughout the whole process. However, Cabinet Members will be brought formally into the process at the stage of the Committee determining action needs to be taken.

Should the Cabinet Member determine that it would be appropriate to take the action recommended by the Committee, and then this should proceed.

Should the Cabinet Member determine that different or no action is required, then the Committee will be informed.

Final Resolution: The final decision will have the choice selected on behalf of the Cabinet or Cabinet Member. There are two possibilities, as follows:

1. Subject to any legal advice, the Cabinet Member's decision shall be final.

2. If the Committee accept this determination, then accordingly the matter will be resolved, subject to the completion of any agreed action. If the Committee consider this would not resolve the issue satisfactorily, then the matter would be referred to the Cabinet and/or full Council for a decision, which shall be final.

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For a better quality of life

This document is published by Essex County Council Minerals and Waste Planning, for The Essex Planning Officers' Association

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