

COUNTY MATTERS DOCUMENT

A guide to the roles and responsibilities of the Gloucestershire County Council planning enforcement team, in relation to the district planning enforcement function

Introduction and purpose

Regulation of land use in England, through the planning system, is predominantly devolved to and shared between Local Planning Authorities (LPAs). In Gloucestershire a 'two tier' system exists, with functions split between Gloucestershire County Council and the six District Authorities - Cheltenham Borough, Cotswold District, Forest of Dean District, Gloucester City, Stroud District and Tewkesbury Borough.

This document looks at roles and responsibilities for a specific but key area of planning regulation – that of investigation, assessment and enforcement of breaches of planning control. This is an area that can be subject to close scrutiny and legal challenge, and failure to discharge this function correctly can have unintended and long lasting consequences.

This document identifies the types of enquiry normally falling under the remit and jurisdiction of the County Planning Authority, sometimes as sole enforcement agency, sometimes as lead or partner agency in conjunction with other(s). In addition it sets out an approach for how LPAs can work closely together to place enquiries with the appropriate Authority and department, and support each other where they can with intelligence gathering.

This document is not intended to be definitive, but a working guide that will be reviewed and updated periodically, according to changing legislation, guidance and any matters arising through its application.

This document will be placed on the Gloucestershire County Council [Planning Enforcement webpage](#), to assist readers in understanding respective roles in planning enforcement, and hopefully directing them to the authority responsible for dealing with their enquiry. It should be read in conjunction with Gloucestershire County Council's [Planning Enforcement Plan](#). This identifies the County's planning enforcement as being 1FTE Officer, with legal, planning and monitoring officer support as necessary and available

County Planning functions

County (planning) matters are defined by statute and listed in:

- As 'Minerals Planning Authority' under [Schedule 1 of the Town and Country Planning Act 1990 \(as amended by the Planning and Compensation Act 1991\)](#) and:
- As 'Waste Planning Authority' under the [Town and Country Planning \(Prescription of County Matters\) \(England\) Regulations 2003](#) -
- For development of Gloucestershire County Council owned land, or land under its control, under [Regulation 3 of the Town and Country Planning General Regulations 1992](#)

with all other planning matters normally falling to the District Council in which the matter arises. How this applies to planning enforcement is outlined in more detail below, but it is important to note that there are a number of exceptions or clarifications which should be read alongside these main headings. It is important to assess each complaint separately according to the nature and scale of allegation received.

Regulation 3 Development

This is development undertaken on land owned by Gloucestershire County Council or where it has a substantial interest in the land. This includes schools (excluding academies), civic amenity sites, libraries, highways, and even the Council offices from which the County Planning Officers operate. Where planning permission has been given this includes ensuring conditions are complied with.

Where the Gloucestershire County Council receives complaints in relation to Regulation 3 development, it will respond to them undertaking any investigation in the same way as it would for any other landowner, occupier or developer. Gloucestershire County Council may use other powers outside of planning enforcement, as available (for example under the Highways Act), to resolve the matter.

Minerals (as Mineral Planning Authority)

Minerals are defined as 'all substances in or under land of a kind ordinarily worked for removal by underground or surface working'.

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."

County matters, in relation to minerals, include:

- Testing, winning and working of minerals, as well as ancillary development such as building, plant, or machinery, and transport infrastructure.
- The erection of any building, plant or machinery for the manufacture of cement
- Depositing of mineral waste
- Land previously used for workings where the operations would conflict with or prejudice compliance with restoration or aftercare conditions. Where development proposals are presented District and County planning teams should discuss these at an early stage to establish who should be responsible for assessing any application relating to the land, and issues to be considered.

Storage or processing of minerals on land separate to extraction or processing will normally be a District matter; one exception is where mineral waste is to be stored or deposited and not processed into a product (e.g. slag heaps).

Where a mineral is to be extracted as a by-product and is of such small quantity that it is considered to be subordinate and ancillary to the development, this is not normally considered to be a County matter. For example, mineral may be extracted as part of the groundworks approved under a District permission, but will not be the main purpose of the activity. However, where any proposed extraction or importation is of such a scale as to establish a separate operation altogether, the extraction would be a County matter, with any application considered in tandem with a separate District one.

Waste (as Waste Planning Authority)

Waste related development, falling within the County Planning function, can be broadly defined as 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.

The key first step is to determine whether the activity or development is waste, as defined in section 1 of the attached government guidance:

<https://www.gov.uk/government/publications/legal-definition-of-waste-guidance/decide-if-a-material-is-waste-or-not#when-waste-ceases-to-be-waste>

“A material is considered to be waste when the producer or holder discards it, intends to discard it, or is required to discard it.....Discarding also covers activities and operations such as recycling and recovery operations, which put waste material back to good use”.

Even when the development can be defined as a waste activity, it may not necessarily be a County matter, according to the considerations below:

Waste disposal

Disposal should not be confused with Recovery, where recycled materials are used instead of virgin minerals, therefore protecting untapped resources. In such cases the purpose of the development is important – if the waste is part of an engineering operation then it is normally a District matter, even if it involves the raising of land levels; for example, the laying down of building waste as a sub-base for operational development to create a car park. If the development is unauthorised then it is a District planning enforcement matter, as the breach relates to the laying out and use of the land as a car park, not the content of the land raise.

There are exceptions to this rule, where the main purpose of a development is considered to be for the covert disposal of waste and is therefore a material change in the use of the land. There have been examples where it has been deemed that the main purpose for the creation of large bunds or bunkers on golf courses has been to facilitate waste disposal. Further guidance on this has been provided by the government in the Ministerial Statement of 20th January 2009 – “*Large-scale Landscaping Development Using Waste*” - which identified a level of 100,000 tonnes as being likely to be waste disposal rather than an engineering operation. Please note that there have subsequently been different interpretations of this Statement provided by case law so each matter should be considered separately as it arises.

Where waste is simply deposited solely for the purpose of disposal then consideration has to be made of the nature, amount, and impact of that deposit, in determining who the enforcing authority should be:

- The Environment Agency will normally lead (with support from the County as appropriate) where deposited waste is a breach of a waste permit, part of wider criminality, where there is a pollution concern, it affects a main river, or it impacts on the functionality of a floodplain.
- If the amounts are deemed to be small in scale, or is putrescible waste, deposited on public land, or is otherwise considered as ‘fly-tipping’ (e.g. household waste) then the matter should normally be referred to the District Environmental Health or Property/Estate Management teams. Where the issue is having a significant impact on visual amenity it might be dealt with by the District Planning team under s215 of the Town and Country Planning Act.

Where deposited waste falls outside of the criteria above, usually as a result of it being significant in volume and made up of inert, non-domestic, waste, then it would normally become a County matter. In s55(3)(b) of the 1990 Town and Country Act the deposit of waste materials on land is specifically stated to be a material use of that land.

While the above examples identify who would lead in such circumstances, the matter may require the involvement of more than one enforcing agency that may have different positions in terms of expediency or desired outcomes.

Waste processing

Where waste is received as a raw material (whether processed or not) and manufactured into a specific 'end of life' product, this product is no longer deemed to be waste. The operation to create the product would not be a waste process but an industrial one and therefore a District matter. For example, the operation may be to receive shredded tyres and process them into safe surface matting for playgrounds.

Where waste is received as recovered raw materials and processed into a different raw material, even if not 'end of life', this is deemed to be an industrial operation and therefore a District matter. In the example above, this may be the receipt of whole vehicle tyres to be shredded for onward processing.

Where waste materials are stored on land separate to any industrial process, as part of a supply chain, this would normally be a County matter. In the example above, this applies where the tyres are collected and stored at a separate location to where they are processed. If they are stored on land where the processing operation takes place (and is 'subserving' to this primary use of the land) then this would normally be considered as an ancillary operation and a District matter in this example.

Where waste materials are collected and recycled, this is normally a County matter. Using the example above, this might apply to a vehicle breaking company or simply to a MRF (Material Recovery Facility) where the tyres are received as a waste product.

It is important to note that this model does not apply to all waste processing, particularly those relating to energy from waste where the main purpose of the activity is seen as disposal of the waste, with the energy element being a by-product. This would therefore be a County matter.

Waste created on land as a by-product and remaining on that land (within the same ownership) even if moved around, will not usually be a County matter as long as there is no importation or exportation. In such cases it may be permitted development (e.g. agricultural by-product) or even a District matter (e.g. land re-profiling as an engineering operation)

Specific examples of waste operations which are deemed to be County Matters includes:

- metal recycling sites
- energy from waste incineration and other waste incineration
- landfill gas generation plant
- pyrolysis/gasification
- material recovery/recycling facilities
- combined mechanical, biological and/or thermal treatment
- in-vessel composting
- open windrow composting
- biomass plants, where waste materials used and are imported from off site.
- anaerobic digestion
- household civic amenity sites
- waste transfer stations
- waste water management
- dredging tips
- storage of waste (where not ancillary to main use of land)
- recycling facilities for construction, demolition and excavation waste.

- concrete batching plants
- car breaking (End of Life vehicles) – If operating under a B2 permission this will be seen as part of a District permission unless the operation is new or significantly different to that permitted.
- Skips – Where empty and for storage only (on separate land to waste transfer) then the matter is for the District, otherwise it is usually a County matter

Exceptions and clarifications

The separation of planning enforcement functions between the County and Districts also depends on a number of other factors and circumstances which include the following:

Land with planning permission

Gloucestershire County Council will be responsible for enforcing all breaches of any planning permissions it issues, as well as those without permission on land it owns or controls (see Regulation 3 development, above) even where the development or activity would otherwise be a District matter. It will also actively monitor conditions relating to minerals sites (and selective waste sites), to ensure ongoing compliance, and the way this is done is set out in the [County Council's Minerals Monitoring Plan](#).

Where development has been given planning permission by the District Council, any matters relating to waste or mineral operations on or in connection with that land – including importation, export or movement around the site - should be addressed through that application. The District should contact the County Planning Authority at an early stage in the assessment of the planning application, or pre-application discussions to give it the opportunity to comment and give advice. Controls relating to waste and minerals operations might be imposed by condition, and covered by submissions such as Construction Method Statements, Waste Minimisation Statements and topographical surveys. The District will then control this matter through identifying a breach of their permission and/or conditions. Where such controls do not exist, any minerals or waste breach in connection with the permission or the land on which it falls should still be addressed by the District themselves, where it is integral to the development permitted.

There is also a need for discussion where there are changes to an existing permission which is starting to vary in nature and scale. For example cremation of animals originating on site may extend to disposing of veterinary waste, moving it from a District to a County matter.

Ancillary and mixed uses

Whether or not an activity is ancillary depends on what the primary use of the land is, and whether the development/activity is directly related to that use. For example a stone cutting operation at a quarry would be County matter when it is processing stone extracted from that quarry, however it would be a District matter if it was on a separate piece of land unconnected to the quarry operations. A waste storage area as part of an industrial process would normally fall to the District as ancillary to the main use. Ancillary may also include infrastructure provision such as the provision of welfare buildings, fixed plant and machinery and the formation, laying out, construction or alteration of a vehicular access to any public highway; the primary use of the site would determine whether County or District would regulate it.

Where operations on the land are not related to each other it may necessitate both County and District becoming involved to address matters separately. In such cases officers should work together to assist in the investigation and keep the other updated on their intentions and progress as it may have implications for the other LPA.

Permitted development

While other parts of the Town and Country Planning (General Permitted Development) Order (2015) may apply, development which falls under the following Parts of Schedule 2 are likely to be a consideration for Gloucestershire County Council:

- Part 6 – Agriculture and Forestry (those classes relating to minerals and waste)
- Part 7 – Non domestic extensions and alterations etc., especially parts K, L, M and N relating to waste deposits, waste management facilities, and schools.
- Parts 9/10 – Highways and Repairs to Services
- Part 12 – Development by Local Planning Authorities
- Part 13 – Water and Sewerage
- Part 17 – Mining and Mineral exploration

Regulatory principles

On receiving an enquiry one of the first stages for the Enforcement Officer will be to assess under whose remit the matter falls. Sometimes a more detailed assessment of the allegation needs to be made before understanding where responsibility for the enquiry lies, or when there are other options for addressing the issue where those most effective and expedient powers lie. In such cases this may necessitate a joint visit between Officers from different LPAs and enforcing agencies, or sometimes just a discussion. Where agreement cannot be reached the matter will be referred to the Planning Team leaders in the respective LPAs to agree on an approach.

Where a matter is to be wholly referred elsewhere, the General Data Protection Regulations require that complainant details are not forwarded without their agreement. Those making complaints should simply be given the correct contact details for making a complaint – these are set out in the section below.

Enforcement Officers will often need support from each other regardless of who is investigating the complaint – for example by providing planning history, contact information, alerting each other to any site safety issues, or providing details of any enforcement matter that might be relevant to the current investigation.

Planning Enforcement Officers will also sometimes require assistance from technical experts within their own or other local authorities - for example Environmental Health Officers to assess noise as part of evidencing and where necessary supporting any action for a breach of condition relating to noise levels.

Enforcement contact details

Further details of how the planning enforcement is undertaken by Gloucestershire Local Planning Authorities, including contact details, are provided at the following locations:

GLOUCESTERSHIRE COUNTY COUNCIL

<https://www.gloucestershire.gov.uk/planning-and-environment/planning-enforcement/how-to-report-a-breach-of-planning-regulations/>

CHELTENHAM BOROUGH COUNCIL

https://www.cheltenham.gov.uk/info/45/planning_enforcement/834/planning_enforcement

COTSWOLD DISTRICT COUNCIL

<https://www.cotswold.gov.uk/planning-and-building/planning-permission/report-breach-of-planning-regulations/>

FOREST OF DEAN DISTRICT COUNCIL

<https://www.fdean.gov.uk/planning-and-building/planning-permission/report-breach-of-planning-regulations/>

GLOUCESTER CITY COUNCIL

<https://www.gloucester.gov.uk/planning-development/planning-enforcement/>

STROUD DISTRICT COUNCIL

<https://www.stroud.gov.uk/environment/planning-and-building-control/planning-enforcement>

TEWKESBURY BOROUGH COUNCIL

<https://www.tewkesbury.gov.uk/forms/planning-infringement-or-unauthorised-development>