

**Minutes of a Meeting of the Performance
and Finance Scrutiny Committee held
Virtually - Public Meeting on 5 January
2021**

+ Cllr Sashi Mylvaganam (Chairman)
+ Cllr Shaun Garrett (Vice Chairman)

- Cllr Dan Adams	+ Cllr Edward Hawkins
+ Cllr Graham Alleway	+ Cllr Darryl Ratiram
+ Cllr Peter Barnett	+ Cllr Graham Tapper
+ Cllr Cliff Betton	+ Cllr Victoria Wheeler
Cllr Vivienne Chapman	+ Cllr Kristian Wrenn
+ Cllr Sarah Jane Croke	
- Cllr Sharon Galliford	

+ Present
- Apologies for absence presented

Substitutes: Cllr Peter Barnett for Cllr Sharon Galliford

Non-Committee Members in Attendance: Cllrs Helen Whitcroft and Valerie White

Executive Portfolio Holders in Attendance: Cllr Adrian Page, Planning & People

Officers Present: Robert Glen, Senior Corporate Enforcement Officer
Julia Greenfield, Corporate Enforcement Manager
Louise Livingston, Executive Head: Transformation
Jonathan Partington, Development Manager
Gavin Ramtohal, Head of Legal
Jenny Rickard, Executive Head: Regulatory
Ryno van der Hoven, Senior Corporate Enforcement Officer

28/PF Surrey Heath Local Enforcement Plan

The Committee considered a report setting out a Member Call-in in respect of a decision taken by the Executive on 17th November 2020 to approve a Local Enforcement Plan for Surrey Heath which would provide a framework for the investigation and assessment of breaches of planning control in line with current national policy.

The Plan, which replaced one initially approved in 2014, would not only provide the Council with up to date guidance on how to establish priorities and procedures for the investigation of alleged breaches of planning control thus enabling planning enforcement resources to be managed and prioritised effectively but it would also provide the public with clear and transparent information about what they could expect from the Council's planning enforcement service.

The Executive's decision to approve the Plan had been called in by Councillor Alleway, supported by Councillor Wheeler, who expressed a number of concerns about the proposed Plan including that:

- The Plan did not adequately address the monitoring of planning decisions.
- The Plan did not make sufficient provision for ward councillors to provide input into enforcement matters.
- The Plan failed to provide a mechanism by which ward councillors could monitor the progress of any enforcement activities.

- There did not appear to be opportunities for routine audit by members of the consistency enforcing planning conditions.
- The Plan implied that Retrospective Planning Applications would be supported

The Committee considered the grounds for each part of the Call In and the following points were noted:

Call in reason Paragraph 1.0 - The Plan appears to not address monitoring of planning decisions as NPPF para 58

Paragraph 58 of the NPPF sets out that effective enforcement is important in maintaining public confidence in the planning system, that enforcement action is discretionary and local planning authorities should act proportionately when responding to suspected breaches of planning control. The NPPF also states that Planning Authorities should use Local Enforcement Plans to proactively manage enforcement in a way that was appropriate for their area including how they would monitor the implementation of planning permissions.

A request for the implementation of a register of planning conditions so that any breaches could be routinely monitored was acknowledged. It was stressed that there was no evidence of significant or widespread breaches of planning conditions in the Borough. Consequently, any monitoring and enforcement activity should be proportionate to the scale of the issue in Surrey Heath. Furthermore, the routine monitoring of all planning conditions would significantly impact on the current resources of the planning enforcement team and significant additional resources would need to be identified to deal with this additional work. It was agreed that the work generated by the development of an enforcement register would be reviewed after six months to ensure that resource levels were appropriate.

It was proposed that a report detailing the progress of any enforcement activities would be taken to the Planning Applications Committee on a quarterly basis to enable any breaches to be monitored by councillors.

Call in reason Paragraph 2.3 made no reference to ward councillor input on behalf of residents when deciding the extent of public amenity impact.

It was acknowledged that ward councillors provided a key source of knowledge with regard to the areas they represented. However care had to be taken to ensure that councillors did not leave themselves open to accusations of bias when making planning decisions which must be considered on their individual merits regardless of the strength of local public feeling.

It was agreed that ward members would be kept informed of any enforcement activity in their ward. However, any consultation should be of a light touch in nature.

Call-In Reason Paragraph 4.5 – Councillors access to up to date progress or status of activity appears missing, and currently means we have to chase officers for updates

Advice from the Council's Information Governance Officer had cautioned against the sharing of information that could lead the Council to be non-compliant with GDPR legislation.

It was considered that the proposed quarterly monitoring report to the Planning Applications Committee would provide sufficient information to monitor the progress of enforcement activities.

Paragraph 5.6 – This section does not assert that retrospective applications are not an alternative way to acquire planning permission [...] Due process should be emphasised.

Retrospective planning applications were a legitimate, albeit risky, means of gaining planning permission. Any applications receive for retrospective permission are determined in the same way as normal planning applications and each application was considered on its own merits. Furthermore, national planning guidance on enforcement recognised that retrospective planning applications could be legitimately used to resolve enforcement concerns.

It was stressed that the Plan did not remove a councillor's right to call in any planning application. Retrospective planning applications were included in the Planning Applications Weekly List which was circulated to a range of individuals including all ward councillors and councillors could within the proscribed time frames continue to call in retrospective planning applications.

It was agreed that the following wording from paragraph 5.6 of the policy "many breaches of planning control occur because the applicant simply did not realise permission was required" would be removed and replaced with "Applicants are highly recommended to seek planning advice when contemplating development."

Paragraph 5.8 - The granting of planning permission does not appear to afford Planning Committee the option of scrutiny just like most other planning applications.

It was reiterated that details of retrospective planning applications received were published on a weekly basis alongside applications for proposed developments and there was nothing in the Plan that changed or removed a councillor's right to call in a retrospective planning application. The Committee noted the actions already taking place in this respect and it was agreed that no changes would be made to this paragraph.

Paragraph 5.16 – There is no councillor communication in the process and many residents will not directly engage with council, only via their elected representatives.

It was agreed that the plan would be updated to reflect that if a third party contacted their ward councillor asking them to act as a conduit then the case officer would liaise with the ward councillor and keep them updated on the outcomes of any enforcement investigations. The flowchart in Appendix 1 would be amended to reflect this.

Paragraphs 5.18 and 5.19 – Four and ten year rules can be used to circumvent due planning process by concealing developments.

The Committee was informed that the four and ten year rules were set out in the Localism Act 2011. The assessment of deliberate concealment of a development was set at a high level and consequently any matters dealt with relating to concealment were considered on a case by case basis with direct legal input.

General – The policy appears not to be the subject of routine audit by members.

The proposed quarterly monitoring report which would be considered by the Planning Applications Committee would provide regular opportunities for members to monitor the progress of enforcement activities.

It was agreed that the Plan would be reviewed on an annual basis to ensure that it was remained up to date and policies were aligned with statutory guidance and regulations.

It was noted that the appendices and forms were live documents to be used by officers operationally and did not a formal part of the policy document. It was agreed that these would be removed from the policy document.

RESOLVED that:

- i. The Executive be advised to reconsider the approval of the Local Enforcement Plan subject to the following amendments being made to the Plan:
 - a. A report detailing the progress of any enforcement activities would be produced and considered by the Planning Applications Committee on a quarterly basis to enable any breaches to be monitored by councillors.
 - b. *Paragraph 2.3 of the Local Enforcement Plan to be updated to reflect consultation with ward members on any enforcement activity in their ward.*
 - c. *Paragraph 5.6 of the Local Enforcement Plan would be revised and the wording “many breaches of planning control occur because the applicant simply did not realise permission was required” would be removed and replaced with “Applicants are highly recommended to seek planning advice when contemplating development.”*
 - d. The plan would be updated to reflect that if a third party contacted their ward councillor asking them to act as a conduit then the case officer would liaise with the ward councillor and keep them updated on the outcomes of any enforcement investigations.
 - e. The flowchart in Appendix 1 would be amended to reflect the changes outlined at recommendation 1d above.
 - f. Appendices and forms would be removed from the policy document.
 - g. The Plan would be reviewed on an annual basis to ensure that it was remained up to date and policies were aligned with statutory guidance and regulations.
- ii. A register of enforcement activities would be developed. The resourcing required to maintain the register would be monitored and reviewed after six months to ensure that resource levels were appropriate.

Chairman