

ANNEX A

LOCAL ENFORCEMENT PLAN 2020 –

Reason for requesting call-in and agreed outcomes and Officer comments, rising from the meeting of the Performance and Finance Scrutiny Committee on 5th January 2021.

A number of recommendations were made to remedy these desires that were not deemed illegal, and would allow ward councillors to represent residents and their concerns, allow ward councillors to view progress of enforcement, ensure accountability for decisions, and ensure the integrity of the Planning System is maintained with member oversight.

The Planning System is a Council process that Ward Councillors are expected to partake in according to LGA. Enforcement is not excluded

Element(s) of the decision which cause concern (Plan paragraph numbers)	Outcome sought by Councillors'	Officer's response to Executive Call in	Agreed Outcome
1.0 The Plan (1.6) appears to not address monitoring of Planning decisions as NPPF para 58.	1.0 insert 1.2a The Implementation of Planning Decisions/Notices will be monitored to ensure compliance and maintain the integrity of the Planning System.	<p>Officers have considered the points raised by Members on the Local Enforcement Plan that was agreed by the Executive Committee, with the following observations provided in response.</p> <p>1.0 - Agreed, monitoring of conditions are not referred to as set out in Para. 58 of the NPPF.</p> <p><u>Para. 58 of NPPF</u> - Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local</p>	1.0 - 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

		<p>enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. <u>This should set out how they will monitor the implementation of planning permissions</u>, investigate alleged cases of unauthorised development and take action where appropriate.</p> <p>At present the Council does not have a Compliance Officer to undertake this work, as this role was deleted a number of years ago. Breach of conditions where notified are investigated but planning permissions are not routinely monitored for compliance. If the Council wishes routine monitoring to be undertaken this would significantly impact on the current enforcement work unless additional staffing resources are put in place. Complaints that conditions have been breached are already investigated in accordance with the priorities set out above. Other conditions will generally be monitored by planning officers on site visits where resources are available. In such cases the breach of condition will be investigated as for any other alleged breach of planning control and, if deemed appropriate and necessary, enforcement action will be taken accordingly.</p>	<p>enforcement in a way that was appropriate for their area including how they would monitor the implementation of planning permissions.</p> <p>A request for the implementation of a register of planning conditions that have been determined at PAC, so that any breaches could be routinely monitored was agreed. 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.</p> <p>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.</p> <p><u>OUTCOME:</u></p> <p>It was agreed that we would take this matter back to the Planning Applications Committee in 6 months' time</p>
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<p>2.3 The statement makes no reference to ward councillor input on behalf of residents when deciding the extent of public amenity impact</p>	<p>2.3 Insert: The Ward Councillor will be consulted to ensure any local knowledge is contributed, and concerns of impacted residents duly taken account of</p>	<p>2.3 – Ward Councillors represent their Wards (complainants and contraveners alike). They cannot form part of the decision making process as if acting in response to a complainant there is a risk of bias in any decision which must be avoided especially if subsequently there is a planning application which must be considered on its merits. Moreover Councillors also still represent the accused and may also be approached by them, for this reason it is better if they do not participate in any decision outside of PAC.</p>	<p>2.3 - 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.</p> <p><u>OUTCOME:</u></p> <p>It was agreed that ward members would be kept informed of any enforcement activity in their ward (in accordance with GDPR). Local ward councillors will have the opportunity to direct the officer to local knowledge and any other material consideration sources.</p>
<p>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</p>	<p>4.5 Ward Councillors shall have access to the activity schedule (personal data omitted) in order communicate progress to residents with agreement of officers</p>	<p>4.5 – This has been dealt with through the Data Protection and Freedom of Information discussions recently. When DPA allows, Councillors are informed when a new complaint is received in their ward. If</p>	<p>4.5 - 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.</p>

	<p>to avoid compromising enforcement actions.</p>	<p>Councillors would like to be kept updated, they just need to contact the Officer assigned to the case to advise them of this.</p>	<p>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.</p> <p><u>Officer Comment</u></p> <p><i>Following the meeting with the Council's Information Governance Officer progress has been made. However, Councillors and Officers are engaged in ongoing discussions to resolve this matter to the mutual satisfaction of all concerned.</i></p>
<p>5.6 The section does not assert that retrospective applications are not an alternative way to acquire planning permission, and especially where it is deliberate and habitual that undermines the due process.</p> <p>The due process of application prior to implementation as the majority of residents abide by should be emphasised.</p>	<p>5.6 Remove: "Many breaches of planning control occur because the applicant simply did not realise permission was required Insert: Applicants are highly recommended to seek planning advice when contemplating development".</p>	<p>5.6 - Retrospective planning applications are a legitimate but risky means of gaining planning permission. See Section 73A (1) of the Act "On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application". Although a local planning authority may invite an application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission – such an application must be considered in the normal way and on its merits even if retrospective. In addition the NPPG for enforcement recognises this as a legitimate way of resolving enforcement concerns.</p>	<p>5.6 - 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.</p> <p>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</p>

			<p>councillors could within the proscribed time frames continue to call in retrospective planning applications.</p> <p>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.</p> <p><u>OUTCOME</u></p> <p>It was agreed to remove paragraph and insert Councillors’ recommendation.</p>
<p>5.8 The granting of Planning permission does not appear to afford Planning Committee the option of scrutiny just like most other planning applications</p>	<p>5.8 insert: The proposal to grant planning permission will be subject to councillor call in for Planning Committee scrutiny.</p>	<p>5.8 - Councillors can call in planning applications in accordance with the constitution and nothing in the LEP changes this.</p>	<p>5.8 - 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.</p> <p><u>OUTCOME</u></p> <p>Withdrawn at the call-in by Councillor Alleway</p>
<p>5.16 There is no councillor communication in the process and many residents will not</p>	<p>5.16. Insert: The officer will engage with the ward councillor to convey their</p>	<p>5.16 – If a third party contacts their local ward councillor asking for them to act as a conduit, the case officer will liaise with the ward councillor, keep them updated and</p>	<p>5.16 - 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</p>

directly engage with council, only via their elected representative.	conclusions where the complainant has chosen this avenue for representation.	inform them of the outcome of the investigation. See 4.5 above.	officer would liaise with the ward councillor and keep them updated on the outcomes of any enforcement investigations. The flow chart in Appendix 1 would be amended to reflect this. <u>OUTCOME</u> Agreed.
5.18/19 4 and 10 year rules can be used to attempt to circumvent due planning process by concealing or where public/interested parties would not normally have sight of development.	Add 5.19a The 4 and 10 year rules may only apply when the development has not been deliberately concealed. A number of other reasons for not discovering a breach such as remoteness of location, not readily visible, or public unaware that the development is a breach, and legality of use, are considerations along with harm to amenity and planning policy violation.	5.18/19 – 4/10 year rule is set out in the Localism Act 2011, no need to make reference to this. Additional wording is unacceptable as some elements are not material planning considerations and by including it in our plan we open ourselves up to legal challenge by way of JR's / Ombudsman complaints and potentially fetter our discretion to act.	5.18/19 - 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. <u>OUTCOME</u> Officer explanation accepted, no amendment to LEP
Appendix 1 Flow Chart – Process excludes Councillors	Appendix 1 Flow Chart – Amend to include reference to Ward Councillors as elected representative of the complainant.	Appendix 1 Flow Chart - see 5.16 above. Councillors will be added to the flow chart.	Appendix 1 Flow Chart – <u>OUTCOME</u> Amendments made
General. The policy appears not to be subject of routine audit by members for application consistency, contemporary status,	General: The plan shall be subject to routine audit to review fitness for purpose and expected performance	General - As members are aware, the Corporate Enforcement team have undergone a number of changes this year. It	General - The proposed quarterly monitoring report which would be considered by the Planning Applications

<p>performance against expected outcomes and opportunities for improvement</p>		<p>is recommended the team be given time for new members of the team to bed in and to review the policy at PAC in 18 months' time.</p> <p>Reports will be provided to PAC on a quarterly basis identifying numbers and types of enforcement cases by parish/ ward and progress on resolving these.</p>	<p>Committee would provide regular opportunities for members to monitor the progress of enforcement activities.</p> <p>It was agreed that the Plan would be reviewed on an annual basis to ensure that it remained up to date and policies were aligned with statutory guidance and regulations.</p> <p>NB: Agreed to remove Appendix 2 and 3 from the Plan due to regular reviewing as these are live documents.</p>
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