

TO: PLANNING & REGULATORY COMMITTEE

DATE: 18 OCTOBER 2017

BY: PLANNING DEVELOPMENT MANAGER

DISTRICT(S) ALL

ELECTORAL DIVISION(S): ALL

PURPOSE: FOR DECISION

TITLE: SURREY COUNTY COUNCIL DEVELOPMENT (REGULATION 3)
MONITORING AND ENFORCEMENT PROTOCOL

SUMMARY REPORT

This report is to advise Members of the proposed protocol for monitoring the implementation of Regulation 3 planning permissions, the process for agreeing remedial works when there has been a breach and measures for escalation to the Planning and Regulatory Committee and, ultimately beyond, if necessary.

Recommendation: that Members adopt the County Council Development (Regulation 3) Monitoring and Enforcement Protocol.

Introduction

1. The County Council is both applicant and determining planning authority in respect of schools, infrastructure and other investment programmes. This is permitted under Regulation 3 of the Town and Country Planning Act. Where irreconcilable planning disputes arise, there is no direct way of resolving matters. The County Council is unable to take enforcement action against itself and therefore this protocol is proposed as a way of addressing concerns in respect of non-compliance with planning permission.

Current Position

2. The County Council as the County Planning Authority (CPA) is the determining authority for the purpose of planning applications under Part 3 of the Town & Country Planning General Regulations 1992 (SI No.1492). Planning applications are prepared and submitted by Service Departments. The CPA deals with up to ninety planning applications annually under Regulation 3, some of which are substantial in scale, such as new schools. The Service Department is required to implement planning decisions in accordance with planning permission issued.
3. The CPA monitors all development that it grants planning permission for, of which schools projects amount to the greatest proportion. The CPA also investigates complaints made by members of the public alleging non-compliance with conditions or unauthorised development on land subject to control by the CPA. All Regulation 3 development may also be monitored by the relevant Borough or District Council. The CPA cannot take enforcement action against the County Council or Service Department as a matter of legal principle.
4. For school development, CPA officers monitor the progress of the implementation of planning permissions, records progress and then shares this with Education and Property. Records of all submissions and requirements are regularly updated. The County Council's overall objective in terms of planning procedure is as an exemplar in terms of practice.

5. There is a risk of adverse public perception in respect of non-compliance as it may be perceived that the County Council cannot self-regulate and act in the collective interest. Breaches of planning control could in certain circumstances raise liability issues for the County Council, for example where planning conditions have been imposed in the interests of highway safety.

Non-compliance

6. The monitoring data is updated on an ongoing basis. Notwithstanding the intention to maintain high standards of performance, the monitoring has highlighted examples of breaches of planning control. Examples include the occupation of schools in advance of the submission and/or approval and/or implementation of the detailed schemes for parking, highway works and landscaping, and other matters that were applied for as pre-commencement conditions. Such reasons can arise where, for whatever reason, there is a mismatch between operational need and the planning process.
7. A number of issues arise from the failure to adhere to planning requirements. The development is unlawful and so the County Council is in breach of planning control. The applicant cannot be assured that the development as built is acceptable in the longer term, which gives uncertainty. The development may be subject to a level of unacceptable risk and liability through unauthorised activity.
8. While there may be a breach of planning control, the CPA cannot take formal action so matters of importance can remain unresolved.

Proposed approach

9. The Surrey County Council (Regulation 3) Monitoring and Enforcement Protocol, attached at Annexe A sets out a Protocol for dealing with such breaches. The CPA expects a very high standard of compliance from those implementing Regulation 3 planning permissions and will expect the applicant to commit to the timely implementation of all planning permissions in accordance with the required timescales, including the submission of detailed schemes as required by planning condition.
10. The failure to obtain prior approval for works the subject of planning conditions is a breach of planning control and will be recorded as such by the CPA. The CPA will maintain a schedule of planning permissions granted under Regulation 3 and this information will be shared with the applicant. The CPA will seek to be pre-emptive in controlling Regulation 3 development so as to minimise or avoid the harm and risks associated with unauthorised development.
11. Where an actual or prospective breach of planning control is identified for Regulation 3 development, Planning Officers will seek to resolve matters promptly through discussion with the applicant, or where urgency is necessary, with direct action.
12. In the event that urgent action is required or that the applicant cannot agree to deliver satisfactory remediation in a reasonable timescale, then the case will be referred to a nominated Panel of Members sitting as a Sub Committee to the Planning and Regulatory Committee. This Planning Regulation 3 Protocol Sub Committee will be formed of five Members consisting of the Chair or Vice Chair of the Planning and Regulatory Committee and at least one Member of each of the main political groupings. The Panel of Members will receive an officers' report setting out the issues and making a recommendation to resolve the breach of planning permission. They will then resolve whether to accept the Planning Officers recommendation in full or in part or to reject the proposals and refer to the matter to the Chief Executive.
13. Formal enforcement action against Regulation 3 development can only be taken by the Borough or District Council in the area in which the development is situated. Particular

breaches may be referred to the relevant Borough or District by the County Council or by third parties. Planning enforcement control and action should be proportionate to the harm caused however and should not delay service delivery unless there is real or immediate planning harm or dis-benefit which cannot be ignored.

Consultation

14. No formal consultation was required as this is an internal protocol. Legal Services were consulted earlier on in the process to ensure that what was being proposed was legally compliant with the Planning Process. The Chair of the Planning and Regulatory Committee and the Cabinet Member for Environment and Planning have similarly been consulted on the broad content of the protocol.

Review

15. Following implementation, the protocol will be monitored and reviewed after 12 months operation when a progress and monitoring report will be submitted to the Planning and Regulatory Committee and any amendments to the protocol agreed at that time. Reports will then be submitted on an annual basis for information. If further amendments to the protocol are considered to be necessary, changes will be agreed in consultation with the Chair of the Planning and Regulatory Committee.

Conclusion

16. The County Council is both applicant and determining authority in respect of Regulation 3 applications. Officers request that the Planning and Regulatory Committee adopts the Development (Regulation 3) Monitoring and Enforcement Protocol to provide a framework for dealing with breaches of planning permission.

Recommendation

17. To **ADOPT** the Surrey County Council Development (Regulation 3) Monitoring and Enforcement Protocol.

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APPENDICES

Annexe 1 – Draft County Council Development (Regulation 3) Monitoring and Enforcement Protocol

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