

Proposed revision to guidance and validation requirements for planning applications determined by the County Council

A report by Head of Planning Applications Group to Planning Applications Committee on 20th March 2024

To advise and seek Members views on updated Guidance and Validation of Planning Application requirements, including the County Council's local information requirements and to seek authority for public consultation before adoption.

Recommendation: Subject to comments of this Committee, Members to note the proposed revision and updates to the Guidance and Validation Requirements for County Council Community Development (Regulation 3 Development) and for Minerals & Waste planning applications and authorise the necessary public consultation on the contents.

In addition, to delegate to the Head of Planning Applications, in consultation with the Chairman of the Planning Applications Committee, the making of any reasonable changes to the documents to address views received following stakeholder consultation and delegate to the Head of Planning Applications, the more regular updating of the documents to ensure that they continue to comply with current government and development plan policy and associated technical and best practice guidance, so as to ensure they remain technically up to date in between formal reviews.

Unrestricted

Introduction

1. This report sets out proposed changes to the Council's validation requirements for the determination of planning applications submitted to the County Council. Validation is an early and key part of the planning application process and determines whether an application is accepted by the planning authority for determination. It is the process by which the planning authority decides whether it has sufficient and correct information with which to commence the processing of a planning application.
2. Planning authorities are required pursuant to the Town and Country Planning (Development Management Procedure) (England) Order 2015 to have validation documents in place to streamline the planning application process by providing guidance to potential applicants on the necessary information to accompany planning applications. Validation documents seek to:

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- assist applicants and agents in ensuring greater clarity and certainty about the type and extent of information required as part of their application;
 - ensure applications are valid and include all the relevant documentation when submitted so that Committee Members and officers have timely and relevant information to enable consideration of planning applications;
 - improve efficiency in the decision-making process by reducing the need to request additional information from the applicant;
 - ensure greater consistency in registering and validating applications submitted to the County Planning Authority; and.
 - provide improvement in the quality and consistency of the information available to Planning Authorities.
3. To minimise uncertainty for planning applicants and potential delays in the processing of applications, all planning authorities are required to consider applications against national validation criteria and information set out in its local validation list. As a minimum, for an application to be accepted as valid, it must meet the national information requirements which comprise the following: - completed application form - correct application fee - ownership certificate - agricultural holdings certificate - Design and Access Statement (where applicable) - site location plan - other plans and drawings necessary to describe the application - Environmental Statement (where applicable) and Biodiversity Net Gain (BNG) requirements. In addition, valid applications are required to meet the requirements of any adopted local information list, which in Kent includes a wide range of topics to address the issues typically raised during the planning process. Failure to supply the above information results in the application being declared invalid, and the application is not progressed. Planning authorities are unable to treat applications as invalid if they meet the statutory national information requirements or the requirements set out in the adopted local information list.
4. As well as setting out the national list of statutory information requirements, government guidance makes provision for each planning authority to agree its own local list of further information requirements to reflect the particular local circumstances and planning policy requirements operating in their area. In preparing the list of information requirements (which are included within the validation documents), the National Planning Policy Framework (NPPF) (2023) makes it clear that planning authorities should only request supporting information that is relevant, necessary and material to the application. In revising local list

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requirements, planning authorities need to consider the following principles:

- necessity – driven by statutory requirements, adopted policies or published guidance
- precision – clarity over which types of development require such information
- proportionate and reasonable having regard to the nature and scale of the proposed development; and
- about a matter which it is reasonable to think will be a material consideration in the determination of the application.

Current Validation Documents and Local Information Requirements

5. The County Planning Authority's current version of the Validation of Planning Applications documents were substantially prepared in 2010 and have performed well in providing advice and guidance to applicants. Whilst they have been informally reviewed as fit for purpose on a regular basis, a significant review has not taken place. Minor changes were permitted under delegated powers, with the need to seek Committee agreement for significant changes, including a change in format.
6. There are currently separate documents for County Council development (Regulation 3 community projects) and for waste development. There is no bespoke mineral document with potential applicants and agents referred to the waste document as an example of the level of detail and range of information that is expected. Each validation document provides an introductory section including why such information is needed, common reasons why applications are invalid and explains the validation process. It then sets out the information requirements at a national and local level, and provides links to further information including a discretionary Validation Checklist. The local validation requirements are set out in tabular form, covering a wide range of topics. For each topic, it sets out the policy drivers, the applications within scope, locational criteria and item content and links to further information.

Proposed Validation Documents and Local Information Requirements

7. Given changes in planning legislation, particularly the recent introduction of Biodiversity Net Gain requirements, and the proposed reforms regarding the performance of planning authorities, it is timely to formally review the validation and local information requirements to ensure that they are fit for purpose. With an emphasis on timely and swift decision making and an

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expected shift away from the use of agreed 'extensions of time requests' with applicants, it is particularly important that the Planning Authority provides clear guidance as to the type and level of information that is necessary to accompany a planning application upon submission. In practice, the expected reduced ability to agree an 'extension of time' with an applicant will mean that there will be limited time and opportunity to resolve matters raised during the planning application process. This will also mean that there will be limited opportunity for additional information to be sought during the planning process if we are to meet expected timescales for determination. To ensure efficient processing of applications in the future, the Planning Authority will want to be satisfied that all necessary information is available at the start of the planning application process and before the commencement of the statutory time period for determination.

8. The proposed validation documents, which include the County Council's local information requirements have therefore been redrafted based upon legislative requirements, new policy drivers and experience of existing casework, common questions and issues and matters raised during the planning process.
9. Two new documents are proposed – one for County Council Community Development (Regulation 3 Development) and a second setting out the requirements for County Matter Development which covers both mineral and waste management development. Both documents adopt a similar format and language, despite the differing contents and requirements. Each document sets out introductory sections, the national information requirements and then the local information requirements (the local list) in considerable detail. Unlike the current documents, the local list requirements are now provided in prose format rather than tabular style. This new style lends itself more appropriately given the level of detail provided and the structure seeks to aid applicants in addressing which elements are relevant to their proposals and the level of detail required more easily. The former discretionary checklist has been revised and is now a local list requirement for major development and complex proposals. It will help provide an early overview of the material submitted. Details of the proposed validation documents are attached as Appendices 1 - County Council Community Development and 2 - County Matter Development.
10. Proportionality and the need to balance the information requirements necessary to assess an application and to avoid undue burdens on an applicant have influenced the drafting of the revised documents. In doing

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so, it has been challenging to keep guidance concise and reader friendly, as intended, and to produce detailed requirements for all type of application, type of development and type of site sensitivity within the ambit of County Council's planning responsibilities. For example, it is important to avoid the absurd situation of some minor applications, e.g. fences, flagpoles, car parks, being technically invalid due the absence of roof plans.

Next Steps

11. Prior to the introduction of the revised validation documents, it is necessary to undertake consultation with the local community, including applicants and agents. There is no definition within the legislation of 'local community' and it has been interpreted in various ways by other planning authorities. For the purposes of the proposed consultation, I suggest that comments be invited from applicants and agents, along with statutory consultees. In determining which applicants and agents to consult, we will consult those who have made a planning application to the County Council since 2020. Subject to any views this Committee may have on the details, the recommendation below seeks a mandate for consultation for a period of 4 weeks. After which time any consultation responses will be considered and changes made as necessary.
12. In the event that no significant changes are required as a result of consultation, the recommendation below seeks delegated authority for the Head of Planning Applications, in consultation with the Chairman of this Committee to make changes that are considered necessary to address matters raised during the consultation. Where significant changes are required following consultation, then these will be reported back to Members for approval prior to publishing the final version for use on the website.
13. Members will be aware of the fast-changing nature of planning reform and it will therefore be important to keep the validation documents as up-to date as possible. With this in mind, I would also ask Members to agree to delegating powers to the Head of Planning Applications Group to ensure that the references within the guidance and validation documents are updated as and when new advice/guidance/policy is published to ensure they remain technically up to date.
14. In respect of the Biodiversity Net Gain requirements, Members should note that two of the Council's emerging policies in the Pre-Submission Draft of

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the Kent Minerals and Waste Local Plan 2024-39 propose requirements in excess of the national requirement of 10% BNG. Draft Policy DM 3 Ecological Impact Assessment states that

‘All development shall achieve a net gain in biodiversity value in accordance with the requirements of the NPPF. All major development shall deliver at least a 10% net gain in biodiversity value with an expectation that the maximum practicable net gain is achieved. All planning applications must be supported by a Biodiversity Net Gain Plan and relevant supporting reports that demonstrate net gain will be achieved, implemented, managed and maintained’.

15. Similarly as part of the Council’s expectation that the highest possible standards of restoration and aftercare will be required, the revised Restoration, Aftercare and After-use policy (Policy DM 19) for considering proposals for minerals extraction and temporary waste management development seeks an enhancement to the national policy requirements regarding Biodiversity Net Gain. The draft DM 19 policy requires that all development should achieve at least 10% biodiversity net gain and demonstrate how maximum practicable on site biodiversity net gain shall result from the development.
16. The national requirement seeks 10% BNG for most forms of development from February 2024. Planning Policy Guidance (PPG) to accompany the BNG legislation issued in February 2024 states that at local plan examination, anything greater than 10% needs justification and testing through the plan making process. It advises that such policies will need to be evidenced, including as to local need for a higher percentage, local opportunities for a higher percentage and any impacts on viability for development.
17. The above draft policies were agreed by Full Council in December 2023 and will be tested at the local plan examination later this year. In light of the later issue of the PPG, it is therefore appropriate that prior to the conclusion of the local plan examination, that the validation of planning applications be carried out against the mandatory requirements, along with the requirement (where applicable) for a draft Biodiversity Net Gain Plan and where relevant draft heads of terms for any legal agreement. The latter two requirements are supported by the recent PPG and can be incorporated into the local list. Assuming policies DM3 and DM 19 are adopted with an enhanced BNG requirement, then the local list would be revised to reflect the local plan policies. In the meantime, the local

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validation requirements include reference to the emerging local plan policy on an advisory basis.

Summary

18. The validation requirements against which the County Planning Authority will assess whether it has sufficient information to validate a planning application and start the planning process have been revised. Revisions have been prepared in accordance with the requirements and principles set out in paragraph 4 above. Draft documents for County Council development (Regulation 3 development) and County Matter development (mineral and waste management development) are set out in appendices 1 and 2 to this report. The revisions are necessary to ensure that validation requirements are up to date, reflect government requirements and provide certainty to applicants in preparing planning applications. The revised documents will also be a useful tool in delivering against national planning performance requirements.
19. This report seeks Member's views on the updated Guidance and Validation of Planning Applications documents and seeks authority for public consultation before adoption.

Recommendation

20. I RECOMMEND that Members:

SUBJECT to any comments made by this Committee

- I. NOTE the proposed revision and updates to the Guidance and Validation Requirements for County Council Community Development (Regulation 3 Development) and for Minerals & Waste Planning Applications;
- II. AUTHORISE the Head of Planning Applications to carry out a 4 week consultation with relevant stakeholders on the revised documents;
- III. DELEGATE to the Head of Planning Applications, in consultation with the Chairman of this Committee, the making of any reasonable changes to the documents to address views received following stakeholder consultation; and
- IV. DELEGATE to the Head of Planning Applications the more regular updating of the Guidance and Validation of Planning Applications documents to ensure that they continue to comply with current Government and Development Plan policy and associated technical and best practice

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guidance, so as to ensure they remain technically up to date in between formal reviews.

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Appendix 1 – Draft Guidance and Validation Requirements for County Council Community Development (Regulation 3 Development) Applications
Appendix 2 – Draft Guidance and Validation Requirements For Minerals & Waste Applications