

# REPORT FOR: **CABINET**

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<b>Date of Meeting:</b>	13 December 2012
<b>Subject:</b>	Consultation Draft Garden Land Development Supplementary Planning Document
<b>Key Decision:</b>	Yes [Affects all Wards]
<b>Responsible Officer:</b>	Caroline Bruce, Corporate Director of Environment and Enterprise
<b>Portfolio Holder:</b>	Councillor Keith Ferry, Portfolio Holder for Planning and Regeneration
<b>Exempt:</b>	No
<b>Decision subject to Call-in:</b>	Yes
<b>Enclosures:</b>	Appendix A – Consultation Draft Garden Land Development Supplementary Planning Document Appendix B – Rec from LDF Panel – 3 Dec – to be circulated

## **Section 1 – Summary and Recommendations**

This report introduces a consultation draft Garden Land Development Supplementary Planning Document (SPD) to support the presumption against garden land development set out in Policy CS1 B of Harrow's Core Strategy (2012)

### **Recommendations:**

Cabinet is requested to:

1. Approve the draft Garden Land Development SPD at Appendix A for public consultation.

**Reason: (For recommendation)**

To progress the preparation of a supplementary planning document, as the most effective way of supporting the implementation of Harrow's new presumption against garden land development.

## **Section 2 – Report**

### **Background**

1. The Core Strategy was adopted 16<sup>th</sup> February 2012 and, therefore, now forms a part of the statutory development plan for the determination of planning applications and appeals in Harrow. One of the key components of the plan's spatial strategy is a presumption against garden land development. Policy CS1 B states that:

*“Proposals that would harm suburban areas and garden development will be resisted...”.*

2. The inclusion of a presumption against garden land development was enabled by changes to PPS 3: *Housing* (now part of the NPPF) which excluded private residential gardens from the definition of previously-developed land, and by the Mayor of London's decision to adopt the replacement London Plan retaining his originally drafted policy that empowers boroughs to introduce a presumption against development on private residential gardens. It is important to underscore that both provisions are merely enabling ones and that it remained necessary for Harrow to justify the introduction of such a presumption locally.

3. During the Examination of the Core Strategy it was the Council's position that a presumption against garden development is justified with reference to evidence about the character, drainage and the biodiversity value of residential gardens. Whilst accepting that, in some instances, these attributes of residential gardens may be contributory factors in judging some proposals to be unacceptable, the examining Planning Inspector was not convinced that the evidence was so clear as to justify a sweeping, borough-wide presumption against development on garden land.

4. However, the examining Planning Inspector was persuaded that the dispersal of residential development onto suburban garden sites would run counter to, and risk undermining, the spatial strategy of concentrating development into areas where services and facilities are already available, where regeneration benefits can be achieved and where developer funding can be pooled to deliver the best overall benefits. Noting that a degree of dispersal from the redevelopment of suburban previously-developed sites is inevitable – paragraph 4.14 of the Core Strategy allows for conversions and other schemes on brownfield land to come forward as 'windfall' housing

supply - he concluded that further garden land development would lead to a degree of dispersal that would be harmful to the spatial strategy of concentration.

### **Implementation of Policy CS1 B: defining the parameters**

5. The intention of the presumption against garden land development is therefore to prevent further, incremental residential development on garden land, leading to a harmful degree of dispersal. The policy is not intended to control the development of domestic extensions and outbuildings. Nor is it intended to frustrate the conversion of houses to flats or other redevelopment on previously developed land, that the Core Strategy provides for as windfall housing supply and which the examining Planning Inspector recognises will lead to an inevitable degree of dispersal.

6. Whilst this distinction of intention is clear, in practice it leads to potential anomalies that must need to be reconciled in the application of the policy. Those anomalies are that:

- those wishing to replace or redevelop an existing dwelling are required to contain the new building within the footprint of the existing dwelling (i.e. the previously-developed portion of the site) to avoid any development on garden land, but that some garden land could be lost if the householder carried out extensions to the existing dwelling; and
- those wishing to realise the development potential of an existing dwelling are encouraged to convert to flats, but disincentivised from proposing (for example) a two storey side extension to form a new dwellinghouse.

7. Following adoption of the Core Strategy, practical application of the presumption against garden land development by officers has evolved to address these anomalies. Specifically, by making allowance for extensions (but not outbuildings) that would be 'permitted development' or those that would accord with Harrow's Residential Design Guide SPD, and by recognising that the conversion of an existing dwelling to flats and the conversion of an extension to a new dwellinghouse results in the same degree of dispersal, officers have reached a workable solution.

8. Nothing in the above approach undermines the Council's ability to apply the presumption against garden land development, as intended, to prevent garden grabbing and backland development.

### **Implementation of Policy CS1 B: spatial strategy, local character and other issues**

9. Following the Core Strategy Examination and at the direction of the Planning Inspector, the reasoned justification to Policy CS1 was amended to clarify the role of the policy (i.e. to manage incremental growth and give effect

to the spatial strategy). Since the adoption of the Core Strategy four appeal decisions<sup>1</sup> have been received concerning garden land development sites.

10. Whilst four appeal decisions represents a small sample, it is nevertheless concerning that these decisions appear to conflate the presumption against garden land development with issues of local character. The following appeal decision extracts are highlighted:

*“I note that the Council has a presumption against ‘garden’ development as part of its spatial strategy for the Borough and that it aims to meet its housing requirement on previously developed land. Although the [National Planning Policy] Framework does not prevent development on garden land in principle, it does require new developments to respond to local character and history and to reflect the identity of local surroundings (paragraph 58). For the reasons given above, the proposal fails to achieve this. I therefore conclude that the proposal would be harmful to the character and appearance of the area and that it would conflict with saved Policy D4 of the UDP and Core Policy CS1 of the CS and Policy 7.4 of the London Plan 2011 which I consider to be the most relevant in this case. These require new development to have regard to the scale, character and form of the surrounding environment, and to respond positively to the local and historic context of the site” (paragraph 11, appeal ref APP/M5450/A/12/2168568).*

*“Policy CS1 of the CS indicates that proposals that would harm the character of suburban areas and garden development will be resisted, with development directed to ‘town centres and strategic previously developed sites’. In this current policy context I consider the effect of such garden development on the character of the area is paramount” (paragraph 8, appeal ref APP/M5450/A/12/2171610).*

11. As noted by the Core Strategy examining Planning Inspector, issues of character (or indeed any other issue) associated with garden land developments stand or fall on their own merits, when assessed against other policies and guidance, but have no bearing on the presumption against garden land development which exists solely to prevent a harmful dispersal of residential development. It is acknowledged that Policy CS1 B appears under the sub-heading ‘Local Character’ but it is nonetheless important that a distinction between the presumption and other issues is made clear to applicants and decision makers alike.

### **Proposed Garden Land Development SPD**

12. Town and Country Planning (Local Planning) (England) Regulations 2012 enable local planning authorities to adopt supplementary planning documents (SPDs) and prescribes the preparation process. SPDs do not carry statutory weight as part of the ‘development plan’ but are nonetheless a

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<sup>1</sup> 107-111 Sylvia Avenue, Hatch End (two separate appeals); 29 Paines Lane, Pinner and 21 South Hill Avenue, Harrow on the Hill.

material consideration in the determination of relevant planning applications and appeals.

13. The National Planning Policy Framework (2012) (NPPF) provides brief advice on the use of SPDs. Specifically, paragraph 153 states that:

*“...Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development”.*

14. It is considered that an SPD could usefully inform both applicants and decision makers, and in so doing support the implementation of Core Strategy Policy CS1 B, by:

- highlighting the national and regional policy authority for introducing a presumption against garden land development;
- explaining the local justification for Harrow’s presumption against garden land development;
- providing a definition (and exclusions) of what constitutes garden land; and
- providing a definition (and exclusions) of what constitutes garden land development.

15. The draft SPD accompanying this report has been prepared to provide the content outlined above. The effect of the draft SPD would be to help set out the parameters within which windfall redevelopment proposals may continue to come forward, having no greater impact upon garden land and the degree of dispersal than would otherwise be permitted (by domestic extensions and conversions), whilst retaining the full force of the presumption in respect of, for example: (i) new residential development in the gardens of corner properties; (ii) the assembly of backland sites for development; and (iii) the construction or conversion of outbuildings as independent dwellings. The draft SPD would also help to bring clarity to the objective of the presumption as distinct from character and other policy considerations.

16. The overall objective of the draft SPD is to strengthen decision making in respect of the presumption against garden development. As it does not propose new requirements the draft SPD would not add to the financial burden upon development. Indeed, the SPD is intended to set out definitively and transparently how the Council will apply Core Strategy Policy CS1 B and, in so doing, help applicants make successful applications (or avoid making unsuccessful ones).

17. Whilst preparing the SPD the opportunity has been taken to introduce an exception for ‘gap’ sites within existing built-up frontage. Such sites are those that occur as an anomaly within an (otherwise) continuous frontage of dwellings in the streetscene, and excludes corner sites and gaps between buildings in areas where large spaces are part of the character of the area. It was not the intention of the presumption against garden land development to frustrate development on such gap sites. Officers anticipate that there will be a very limited number of remaining, undeveloped gap sites in the Borough

and, therefore, it is unlikely that this exception will lead to a harmful degree of development dispersal.

### **Other options considered**

18. There are two alternative options to the preparation of an SPD:

- do nothing; and
- issue an informal guidance note.

19. Do nothing: Continuing to apply the presumption against garden land development on a case by case basis is a viable option. Council officers, the Planning Committee and Planning Inspectors would continue to exercise judgement when making decisions on specific proposals. This would allow parameters to evolve through appeal decisions in marginal cases and would rely on the submission of bespoke, explanatory appeal statements to highlight the objective of the presumption in individual cases. However such an approach risks inconsistency in decision making, ill-informed appeal decisions that undermine the policy and (in marginal cases) awards of appeal costs against the Council if a decision to refuse is found by a planning inspector to constitute unreasonable behaviour. Set against the benefits and relatively modest costs associated with the preparation of an SPD, this option can be discounted.

20. Informal guidance: the text contained within the draft SPD could simply be published on the Council's website as an informal guidance note, thus avoiding the costs associated with preparing, consulting upon and adopting an SPD. Such a note may still be a material consideration when considering planning applications, but the weight to be attached to such a note in the absence of public consultation and formal adoption is likely to be limited. Therefore, although cheaper than an SPD, this would be less effective and can also be discounted.

### **Consultation of draft Garden Land Development SPD**

21. In accordance with the Council's adopted and draft replacement Statement of Community Involvement (SCI) it is proposed to consult widely on the draft SPD. Specifically, the following consultation methods will be employed:

- notification by e-mail or letter to all persons/organisations listed on the existing planning policy database and on the Council's interactive consultation portal (where users have specified an interest in town and country planning);
- publicity on the planning policy pages of the Council's website; and
- local press notice.

22. The consultation will be open for a period of six weeks and will commence as soon possible following the approval of Cabinet, subject to the demands upon officer time of the forthcoming Examination in Public of three

development plan documents<sup>2</sup>. The outcome of the consultation, and any resulting amendments to the SPD, will be reported back to LDF Panel and Cabinet next year as part of the adoption process. In accordance with the requirements of the Town and Country Planning (Local Planning) (England) Regulations 2012, the Council must publish a consultation statement explaining how any issues raised in representations have been addressed in the SPD.

## **Implications of the Recommendation**

### **Legal comments**

23. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

24. Although the proposed SPD is not a development plan document it will, on adoption, be a material consideration in the determination of proposals for development affecting garden land and appeals against refusal of such proposals.

25. The Council is required by law to consult on the SPD and to take into account all consultation responses received before adopting the SPD.

### **Financial Implications**

26. The draft SPD and associated consultation and adoption represents a relatively minor project, the costs of which can be adequately contained within the existing LDF budget. However it is not proposed to publish a large number of copies of the consultation draft SPD (a small number of hard copies will be published in-house to fulfil the consultation requirements of the Regulations).

### **Performance Issues**

27. The adopted Core Strategy contains a detailed schedule of monitoring indicators, with associated targets, triggers and contingency actions, to ensure that the delivery of Harrow's spatial vision remains on track (and if necessary, brought back on track) throughout the plan period (2009-2026). These indicators will be monitored through the continuing publication of the Authority's Monitoring Report (previously known as the Annual Monitoring Report).

28. The purpose of the proposed SPD is to contribute to the effective implementation of the Core Strategy's presumption against garden land development. Therefore, monitoring of Core Strategy indicator LC1 (*planning appeals dismissed for inappropriate garden development*) will be used to

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<sup>2</sup> The Harrow & Wealdstone Area Action Plan, the Development Management Policies DPD and the Site Allocations DPD.

monitor the implementation of this aspect of the Core Strategy as supported by the proposed SPD.

## **Environmental Impact**

29. Sustainability appraisal is not required for supplementary planning documents but the Council must still consider whether there is a requirement for strategic environmental assessment (SEA). The proposed SPD does not (cannot) introduce new policy or modify the existing garden development policy, but simply supplements the Core Strategy which was subject to full sustainability appraisal (incorporating the requirements of SEA) at each formal stage of the Core Strategy's preparation. Therefore, it is considered unlikely that the SPD would give rise to significant environmental effects requiring SEA.

30. The presumption against garden land development gives effect to Harrow's spatial strategy by controlling the degree of dispersed development throughout the Borough and thereby helping to direct development to previously developed sites within the Intensification Area, town centres and other accessible locations. The spatial strategy is in part predicated on the objective to direct growth to locations that (i) reduce the need to travel and (ii) support sustainable transport choices. Therefore, by contributing to the effective implementation of the presumption against garden land development and although of no significant environmental effect in its own right, the proposed SPD will help to underpin the environmental objectives of Harrow's spatial strategy.

## **Risk Management Implications**

Risk included on Directorate risk register? Yes

31. As noted above, public participation is one of the regulatory requirements for the preparation of an SPD, and both the Regulations and the NPPF are clear about the secondary (non development plan) role of SPDs. The draft SPD the subject of this report has been prepared specifically for consultation purposes and recognising that it cannot introduce new policy or add to the burden upon development. Officers will manage the consultation and adoption of the SPD to ensure that it complies with regulatory requirements for the preparation of the SPD. Proper application of the SPD to relevant proposals should reduce the risk an award of costs in marginal appeal cases and ensure the effective implementation of Harrow's spatial strategy.

## **Equalities implications**

Was an Equality Impact Assessment carried out? No

32. By definition, supplementary planning documents cannot introduce new policies nor modify adopted policies and do not form a part of the development plan. Rather, their role is to supplement a 'parent' policy in a development plan document. The draft SPD the subject of this report



supplements Policy CS1 B of the Harrow Core Strategy development plan document. A full equalities impact assessment was carried out at each formal stage in the preparation of the Core Strategy.

33. Therefore, there is no requirement to carry out an equalities impact assessment of the draft SPD the subject of this report, because the impact of implementing Policy CS1 B has already been considered as part of the Core Strategy equalities impact assessment.

### **Corporate Priorities**

34. The draft revised SPD will contribute to the delivery of the following corporate priorities:

- keeping neighbourhoods clean, green and safe: by supporting the implementation of the Core Strategy's garden land development policy, the draft SPD will help to protect gardens in suburban areas from pressure for new residential development
- united and involved communities: consultation on the draft SPD will encourage participation by residents, businesses and developers in the decision about how the Core Strategy's garden land development policy is applied

### **Section 3 - Statutory Officer Clearance**

Name: Kanta Hirani	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 8 November 2012		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 12 November 2012		

### **Section 4 – Performance Officer Clearance**

Name: Martin Randall	<input checked="" type="checkbox"/>	on behalf of the Divisional Director Strategic Commissioning
Date: 31 October 2012		

## **Section 5 – Environmental Impact Officer Clearance**

Name: Andrew Baker



on behalf of the  
Divisional Director  
(Environmental  
Services)

Date: 8 November 2012

## **Section 6 - Contact Details and Background Papers**

**Contact:** Matthew Paterson, Senior Professional Policy Planning, Development and Enterprise, phone 020 8736 6082

**Background Papers:** Recent garden land development appeal decisions

**Call-In Waived by the  
Chairman of Overview  
and Scrutiny  
Committee**

**NOT APPLICABLE**

*[Call-in applies]*