

REPORT FOR: CABINET

Date of Meeting: 11 April 2013

Subject: Garden Land Development Supplementary Planning Document

Key Decision: Yes

Responsible Officer: Caroline Bruce, Corporate Director of Environment and Enterprise

Portfolio Holder: Councillor Keith Ferry, Portfolio Holder for Planning and Regeneration

Exempt: No

Decision subject to Call-in: Yes

Enclosures: Appendix A – Schedule of Consultation Responses to the draft Garden Land Supplementary Planning Document
Appendix B – Garden Land Development Supplementary Planning Document for adoption

Section 1 – Summary and Recommendations

This report proposes the adoption of the 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. Adopt the Garden Land Development SPD at Appendix B.
2. Delegate authority to the Divisional Director of Planning to make typographical corrections and any other necessary non-material amendments to the Garden Land Development SPD prior to formal publication of the SPD.

Reason: (For recommendation)

To adopt the supplementary planning document for development management purposes as the most effective way of supporting the implementation of the presumption against garden land development set out in Harrow's Core Strategy.

Section 2 – Report

Background

1. The Core Strategy was adopted 16th 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 presumption against garden land development exists solely to prevent a harmful dispersal of residential development onto suburban garden sites. Other attributes of garden development proposals – such as their impact on local character, the amenity of neighbouring occupiers, drainage and biodiversity – can be assessed against other plan policies.

3. A report making the case for a supplementary planning document (SPD) to support the implementation of the Core Strategy in this regard, and seeking approval of a draft SPD for public consultation, was brought to Cabinet on 13th December 2012. The draft SPD was approved and was published for a four-week long public consultation on 7th February 2013. This report details the outcome of that consultation and the Council's response, including changes to the SPD where appropriate. The report concludes by recommending that the SPD (incorporating the changes) be adopted.

Harrow Garden Land Development SPD

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

5. 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".

6. It is considered that the SPD would, upon adoption, usefully inform both applicants, decision makers and other participants in the planning process, 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.

7. The overall objective of the SPD is to strengthen decision making in respect of the presumption against garden development. As it does not introduce new requirements the 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).

Consultation Undertaken

8. The draft SPD was published electronically on the Council's website and on the Council's consultation portal, and a paper copy was placed on deposit at each of the Borough's libraries and at the Civic Centre (duty planner office). Consistent with the methods used to publicise the Core Strategy and other SPDs:

- a public notice was placed in the Harrow Observer newspaper, on 7th February; and
- over 1,000 notifications were sent to by letter and e-mail to individuals and organisations on Harrow's LDF consultation database and users

with a registered interest in town and country planning on the Council's consultation portal.

9. In accordance with Regulation 12 of the Town and Country Planning (Local Planning) (England) Regulations 2012 the SPD consultation was undertaken for a period of four weeks, commencing 7th February and closing 7th March 2013.

Outcome of Consultation

10. There were a total of 19 responses to the consultation. They comprised:

- 4 responses from local residents groups/amenity societies;
- 7 responses from statutory undertakers/consultation bodies;
- 3 responses from local residents; and
- 5 responses from developers/planning consultants.

11. The representations are reproduced in full, alongside the Council's response, in the Schedule of Consultation Responses at Appendix A to this report. The main issues raised are summarised below.

12. Responses from local residents and resident/amenity groups were generally supportive of the SPD seeking only minor or detailed changes to wording. In some instances the changes sought go beyond the scope of the SPD (which is solely to supplement the Core Strategy policy provisions on garden land development) and cannot therefore be included. However, the Council agrees with proposed changes put forward by the Pinner Association to paragraph 3.3 (c) of the SPD to; (i) improve clarity about the status of sites historically but no longer forming garden land; and (ii) to add text under the section headed '*What are appropriate enlargements?*' to highlight the potential need to withdraw permitted development rights from new dwellings where these are justified under this provision of the SPD. The Council also agrees, in response to a resident representation, that paragraph 3.5 (b) should be clarified to avoid unnecessary semantic argument about its applicability to sites formed from single (as well as multiple) gardens and sites not at the 'rear' of the donor house. These changes are incorporated in the SPD that it is proposed to adopt at Appendix B to this report.

13. Both the Hatch End Association and the Campaign for a Better Harrow Environment (CBHE) questioned the SPD's exclusion (at paragraph 3.3) of land within the curtilage of retail parades, noting that these may provide an amenity for occupiers of maisonettes above shops. However, it is considered that the extension of the presumption against garden land development to such circumstances would be contrived and at odds with the NPPF (paragraph 53) and the London Plan (Policy 3.5), which clearly refer to residential gardens, and would be unlikely to succeed if challenged at appeal. In the event of a lost amenity space to the rear of a shop, e.g. by a shop extension proposal, Core Strategy and development management policies may be used to secure an appropriate replacement amenity (e.g. as a roof garden).

14. Responses from statutory undertakers/consultation bodies either confirmed no comment, or sought specific changes which go beyond the scope of the SPD.

15. Responses from developers/planning consultants expressed continued opposition to Harrow's presumption against garden land development, citing various concerns including the inflexibility of the Core Strategy policy, the impact on housing supply, the impact on development opportunities for small-medium size housebuilders, and the compatibility of Harrow's approach with the NPPF and the Government's pro-growth agenda. The issues associated with garden land development, its national and regional policy justification, its local justification, and the implications for sustainability and housing supply, were fully explored as part of the Core Strategy Examination in Public. The Core Strategy was found to be sound. Since the adoption of the Core Strategy the final version of the NPPF has been published and this strengthens, rather than diminishes, the case for garden land development policies. Moreover it is beyond the scope of an SPD to revisit or 'unpick' the policies of an adopted development plan document (DPD). In terms of opportunities for small-medium sized developers, it can be noted that the Core Strategy allows for 'windfall' development on previously developed land, such as house conversions, and that the SPD provides reasonable amplification of the garden land policy in relation to 'gap' sites and proposals for the redevelopment of existing dwellings. The Council agrees, in response to a proposed change put forward by a developer representation, to improve the clarity of paragraph 3.3 about the status of sites historically but no longer forming garden land (in conjunction with Pinner Association change – see above).

Other options considered

16. Subject to the minor changes arising from the consultation responses, as described in the Schedule of Consultation Responses at Appendix A, it is recommended that the SPD be adopted.

17. There are two alternative options to the adopting the SPD:

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

18. 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 producing and adopting the SPD, this option

can be discounted. It would also mean that expenditure already undertaken in the preparation and consultation of the SPD would be abortive.

19. Informal guidance: the text contained within the SPD could simply be published on the Council's website as an informal guidance note, thus avoiding the costs associated with adopting the SPD (comprising the preparation of an adoption statement and any printing costs). 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 the SPD, this would be less effective and can also be discounted. It would also mean that expenditure already undertaken in the preparation and consultation of the SPD would be abortive.

Implications of the Recommendation

Legal comments

20. 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.

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

22. 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

23. The adoption of the SPD represents a relatively minor project, the costs of which can be adequately contained within the existing LDF budget. The most resource intensive part of the work (preparation and consultation) has already been undertaken.

Performance Issues

24. 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).

25. The purpose of the 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 monitor the implementation of this aspect of the Core Strategy as supported by the SPD.

Environmental Impact

26. 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 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.

27. 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 SPD will help to underpin the environmental objectives of Harrow's spatial strategy.

Risk Management Implications

Risk included on Directorate risk register? Yes

28. 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 SPD which it is proposed to adopt has been publicised and made available for consultation in accordance with the requirements of the Regulations. Regulation 14 requires an adopted SPD to be made available, together with an adoption statement, as soon as reasonably practicable following the local planning authority's adoption of the SPD. Officers will ensure that these requirements are fulfilled. 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

29. 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 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.

30. Therefore, there is no requirement to carry out an equalities impact assessment of the 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

31. The SPD will contribute to the delivery of the following corporate priority:

- keeping neighbourhoods clean, green and safe: by supporting the implementation of the Core Strategy's garden land development policy, the SPD will help to protect gardens in suburban areas from pressure for new residential development

Section 3 - Statutory Officer Clearance

Name: Kanta Halai	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 14 March 2013		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 14 March 2013		

Section 4 – Performance Officer Clearance

Name: Martin Randall	<input checked="" type="checkbox"/>	on behalf of the Divisional Director Strategic Commissioning
Date: 8 March 2013		

Section 5 – Environmental Impact Officer Clearance

Name: Andrew Baker



on behalf of the
Divisional Director
(Environmental
Services)

Date: 11March 2013

Section 6 - Contact Details and Background Papers

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

Background Papers: None

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

NOT APPLICABLE

[Call-in applies]