

**OPEN**

By virtue of paragraph(s) X of Part 1 Schedule 1 of the Local Government Act 1972.

**Environment and Communities Committee**

**9 November 2023**

**Environmental Protection Supplementary Planning Document**

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**Report of: Jane Gowing, Interim Director of Planning**

**Report Reference No: EC/30/23-24**

**Ward(s) Affected: All**

**Purpose of Report**

- 1 This report seeks approval to consult on the final draft of the Environmental Protection Supplementary Planning Document (“SPD”)
- 2 Cheshire East Council’s Corporate Plan sets out three aims. These are to be an open and enabling organisation, a Council that empowers and cares about people, and to create thriving and sustainable places. In striving to create thriving and sustainable places, a key objective is to reduce impact on the environment and appropriately control development to protect and support our borough. As such, this SPD (Supplementary Planning Document) sets out guidance on how planning decisions can contribute to these aims.

**Executive Summary**

- 3 This report seeks approval to carry out four weeks of public consultation on the final draft Environmental Protection SPD.
- 4 The final draft SPD provides guidance on the council’s approach to Environmental Protection issues when considering planning applications. The specific areas covered in the final draft SPD are air quality (including dust pollution), contaminated land, noise, light pollution and odour pollution. All these issues have the potential to affect the health and wellbeing of Cheshire East’s residents, businesses and visitors and the SPD sets out the relevant technical advice aimed at preventing or reducing the impact of proposed developments and protecting public health, wellbeing and amenity across the borough.

- 5 The preparation of a Supplementary Planning Document involves two stages of public consultation. The first consultation stage was carried out on a draft document between 18 October and 29 November 2021, receiving representations from 19 different parties.
- 6 A report of consultation is included at Appendix B, setting out the feedback from stage one and how the document has been altered in response to that feedback. Comments received on the final draft of the document will also be considered, ahead of the SPD being considered for adoption by the Environment and Communities Committee.
- 7 Once adopted, the SPD will provide additional planning policy guidance on the implementation of the Development Plan Policies, most notably Local Plan Strategy Policy SE 12 'Pollution, Land Contamination and Land Instability'. Once adopted, the SPD will be a material consideration in decision making on planning applications and will support the delivery of policies in the Development Plan.

#### RECOMMENDATIONS

The Environment and Communities Committee is recommended to:

1. Approve the publishing of the Final Draft Environmental Protection Supplementary Planning Document (Appendix A) for a period of four weeks public consultation.
2. Publish the associate Report of Consultation (Appendix B)
3. Publish the associated Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report (Appendix C)
4. Publish the associated Equalities Impact Assessment Screening Report (Appendix D)

#### **Background**

- 8 This SPD sets out guidance on policies contained in the Local Plan Strategy and SADPD (Site Allocations and Development Policies Document) that will support these objectives by setting out clear guidance on the council's approach to Environmental Protection issues when considering planning applications. The SPD covers matters that fall within the remit of the council's Environmental Protection Team, including air

quality (including dust pollution), contaminated land, noise, Light pollution and odour pollution.

- 9 One of the key objectives of the LPS (Local Plan Strategy) is to protect and enhance environmental quality and ensure that development addresses the local causes of water, air, light, noise and other forms of pollution and contaminated land.
- 10 LPS Policy SE12 'Pollution, Land Contamination and Land Instability' sets out the approach the Council will take to these matters and how they should be addressed in planning proposals and decision making. A suite of additional policies is also set out in the SADPD, providing detailed requirements that applicants must satisfy to gain planning consent.
- 11 This SPD provides greater clarity to developers, landowners, communities and decision makers on the approach the Council will take to Environmental Protection matters and provides additional guidance to applicants on how they should respond to the policy requirements in the LPS and SADPD. It also 'signposts' sources of information, including relevant documentation and Council services.
- 12 The final draft SPD has been prepared by a cross disciplinary team involving staff from the Strategic Planning Team, the Environmental Protection Team and the Development Management Team.
- 13 Subject to the approval of the recommendations in this report, the SPD will be consulted on in accordance with the Council's Statement of Community Involvement for a minimum period of four weeks.
- 14 The process for preparing an SPD is similar in many respects to that of a Local Plan document. However, they are not subject to independent examination by the Planning Inspectorate. There are several stages in their production:
  - (a) Publish the first draft SPD for four weeks public consultation;
  - (b) Consider feedback received and make any changes necessary;
  - (c) Publish the final draft SPD, along with a consultation statement setting out who has been consulted in its preparation, the key issues raised in feedback and how those issues been addressed in the final draft SPD;
  - (d) Having considered representations, the SPD could then be adopted.

- 15 Following adoption, the SPD must be published and made available along with an adoption statement in line with the 2012 Regulations. The adoption of the SPD may be challenged in the High Court by way of judicial review within three months of its adoption.
- 16 Once adopted, the effectiveness of this SPD will be monitored as part of the Authority Monitoring Report, using information from planning applications and decisions. The outcome of this ongoing monitoring work will help inform future decisions about the SPD.

### **Consultation and Engagement**

- 17 Following initial consultation on the first draft document in October and November 2021 the feedback received has been considered and the document updated. The first consultation received 38 responses from 19 different parties and several key changes have been made to the document including:
  - (a) Referring to the now adopted SADPD policies;
  - (b) References to other potential stakeholder and consultees, such as United Utilities and the Canal & River Trust
  - (c) Confirmation that land contamination can arise from a variety sources, not just industrial heritage.
  - (d) Multiple updates and changes based on improving legibility and providing further information
- 18 A full report of consultation is available at Appendix B, which provides a response to all key issues raised through the consultation and details all the changes made because of those issues.
- 19 Following consultation on this final draft of the Environmental Protection SPD, the feedback received will be reviewed and consideration given to whether further changes should be made to the document. Following any changes, the document will then be published to the Environment and Communities Committee, alongside a report of consultation, for consideration whether to formally adopt the document.

### **Reasons for Recommendations**

- 20 A SPD is not part of the statutory development plan, but it is a recognised way of putting in place additional planning guidance and a material consideration in determining planning applications in the borough.
- 21 Providing clear, detailed guidance up front about policy expectations should enable applicants to better understand policy requirements. The

SPD should assist applicants when making relevant planning applications, and the Council in determining them.

- 22 The guidance and technical advice set out in the final draft SPD will enable applicants to make sure that their proposed development meets policy requirements and is designed to minimise the impacts on public health, wellbeing and amenity.

### Other Options Considered

- 23 The Council could choose not to prepare an SPD on Environmental Protection matters. Any relevant planning application would continue to be assessed against existing planning policies. However, this would not allow the Council to provide additional practical guidance on this matter or give clarity to the approach that should be employed by all parties in a consistent way that gives certainty to applicants and decision makers.

Option	Impact	Risk
Do nothing	The Environmental Protection SPD could not progress through the stages required by legislation and therefore could not be adopted and become a material consideration in the determination of planning applications.	The improved outcomes that could be achieved through additional guidance on how developers are expected to address policies of the Local Plan, would not be achieved.

### Implications and Comments

#### *Monitoring Officer/Legal*

- 24 The Planning and Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Development) (England) Regulations 2012 provide the statutory Framework governing the preparation and adoption of SPDs (Supplementary Planning Document). These include the requirements in Section 19 of the 2004 Act and various requirements in the 2012 Regulations including in Regulations 11 to 16 that apply exclusively to producing SPDs.
- 25 Amongst other things, the 2012 regulations require that an SPD contain a reasoned justification of the policies within it and for it not to conflict with adopted development plan policies.

- 26 The National Planning Policy Framework and the associated Planning Practice Guidance also set out national policy about the circumstances in which SPDs should be prepared.
- 27 SPDs provide more detailed guidance on how adopted local plan policies should be applied. They can be used to provide further guidance for development on specific sites, or on issues such as design. SPDs are capable of being a material consideration in planning decisions but are not part of the development plan.
- 28 As with the previous round of consultation, any public consultation should comply with the 'Gunning Principles':
- (a) proposals are still at a formative stage - A final decision has not yet been made, or predetermined, by the decision makers
  - (b) there is sufficient information to give 'intelligent consideration' - The information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response
  - (c) there is adequate time for consideration and response - There must be sufficient opportunity for consultees to take part in the consultation.
  - (d) 'Conscientious consideration' must be given to the consultation responses before a decision is made. Decision-makers should be able to provide evidence that they took consultation responses into account

#### *Section 151 Officer/Finance*

- 29 There are no significant direct financial costs arising from consultation on the SPD. The costs of printing and the staff time in developing the SPD are covered from existing budgets of the planning service.

The financial burdens associated with following the Environmental Protection SPD rest with site promoters/developers, not with the Council. Therefore, there is no expected impact on the Council's approved budget/Medium Term Financial Strategy (MTFS). Through viability testing undertaken as part of the process to adopt the policies of the LPS and SADPD, it was found that in most locations in Cheshire East, compliance with the requirements of planning policy was viable. Where policy requirements are considered not to be viable, it is the responsibility of the applicant to demonstrate why policy requirements should not be met.

#### *Policy*

- 30 The SPD will expand on how existing development plan policies related to the environmental protection may be applied. An SPD will give additional advice to applicants on how they can demonstrate they have complied with relevant policies of the development plan related to this matter.
- 31 It will contribute to the aims and priorities of the Corporate Plan as set out in the Table below.

<p><b>An open and enabling organisation</b></p> <p>Ensure there is transparency in all aspects of council decision making</p> <p>Listen, learn and respond to our residents, promoting opportunity for a two-way conversation</p> <p>The report includes a Report of Consultation, setting out the key issues raised through the previous consultation and what we have changed in response or an explanation of why a change would not be appropriate for this SPD.</p>	<p><b>A council which empowers and cares about people</b></p> <p>Reduce health inequalities across the borough</p> <p>The guidance and advice contained in the SPD aims to prevent or reduce the impact of proposed developments across the borough and protecting public health, wellbeing and amenity.</p>	<p><b>A thriving and sustainable place</b></p> <p>A great place for people to live, work and visit</p> <p>Reduce impact on the environment</p> <p>The guidance and advice contained in the SPD aims to prevent or reduce the impact of proposed developments across the borough and protecting public health, wellbeing and amenity.</p>
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*Equality, Diversity and Inclusion*

- 32 The Council has a duty under Section 149 of the Equalities Act to have due regard to the need to: eliminate discrimination; advance equality of opportunity between persons who share a “relevant protected characteristic” and persons who do not share it; foster good relations between persons who share a “relevant protected characteristic” and persons who do not share it.
- 33 The final draft Environmental Protection SPD provides further guidance on the approach that is expected from developers on this matter. The SPD is consistent with the LPS and SADPD which were the subject of an Equalities Impact Assessment (EqIA) as part of an integrated Sustainability Appraisal. A draft EqIA on the final Environmental

Protection SPD has been prepared (Appendix D) and will be published alongside the final draft SPD for comment.

#### *Human Resources*

34 There are no direct implications for human resources.

#### *Risk Management*

35 The subject matter of the report does not give rise for any particular risk management measures because the process for the preparation of an SPD is governed by legislative provisions (as set out in the legal section of the report).

#### *Rural Communities*

36 The final draft Environmental Protection SPD seeks to provide further guidance on Environmental Protection matters in new development. Whilst most major development is expected to take place in, or adjacent to urban areas the guidance will apply to sites in rural areas too, where relevant, and therefore will benefit communities directly or indirectly from the reduced impact of development on public health, wellbeing and amenity.

#### *Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

37 The draft SPD does not have a direct implication for children and young people or cared for children but will assist in securing development that protects public health, wellbeing and amenity across the borough.

#### *Public Health*

38 The draft SPD is likely to have an overall positive impact on public health and wellbeing by setting out clear requirements that protect the environment and therefore the wellbeing and public health of communities across the borough.



## Climate Change

- 39 Whilst the draft SPD does not have any direct climate change implications it may assist in promoting more active and sustainable travel options through the management of air quality pollution related to travel.

<b>Access to Information</b>	
Contact Officer:	Tom Evans, Neighbourhood Planning Manager and Interim Environmental Planning Manager  Tom.evans@cheshireeast.gov.uk
Appendices:	Appendix A: Final Draft Environmental Protection SPD  Appendix B: Report of Consultation  Appendix C: Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report  Appendix D: Equalities Impact Assessment Screening Report
Background Papers:	N/A

## Appendix 1

### **OPEN/NOT FOR PUBLICATION**

By virtue of paragraph(s) X of Part 1 Schedule 1 of the Local Government Act 1972.

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**Approvals trail: to be removed before Committee**

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Name	Title	Comments	Date
Contributors:			
Stewart House		Draft report	13/09/2023
Tom Evans		Draft report	28/09/2023
Steve Reading (finance)	Principal Accountant	Draft report finance comments	29/09/2023
Approvers:			
Jane Gowing			