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## **Strategic Planning Board**

**Date of Meeting:** 27 February 2019

**Report Title:** Hand Car Washes and Planning

**Portfolio Holder:** Cllr Ainsley Arnold

**Senior Officer:** Adrian Fisher, Head of Planning Strategy

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### **1. Report Summary**

- 1.1. At its meeting on 13 December the Council considered and passed a notice of motion proposing that a Supplementary Planning Document be prepared to address hand car washes and valets in Cheshire East.
- 1.2. This report summarises the current issues facing this Council and other local authorities due to the proliferation of hand car washes in the UK, as highlighted in the recent Commons Select Environmental Audit Committee inquiry into the issue. It examines how Cheshire East and other authorities are addressing these issues through existing planning and environmental legislation and options for the production of additional planning advice.
- 1.3. Two options are considered: a Supplementary Planning Document (SPD) and a best practice Planning Guidance Note on hand car washes.

### **2. Recommendation/s**

- 2.1. To consider the issues as set out in the report.
- 2.2. That the Housing, Planning and Regeneration Portfolio Holder be recommended to endorse the production and use of a Supplementary Planning Document on hand car washes, following the outline attached at Appendix 2.

### **3. Reasons for Recommendation/s**

- 3.1. The recent Notice of Motion requires the Board to consider the planning implications of hand car washes. As highlighted in the Commons Select

Environmental Audit Committee inquiry, there is scope for planning departments to be better informed when dealing with applications and complaints, relating to hand car washes. It is recommended that a SPD on hand car washing be produced to ensure that the Council has more detailed guidance to address the range of planning and environmental issues that may arise relating to this type of development. It will set out the scope of planning responsibilities and when to involve other regulatory agencies such as United Utilities, the Environment Agency and other Council services.

- 3.2. Whilst the adopted Local Plan Strategy and the emerging SADPD contain general planning objectives to guide such applications, additional detail should prove helpful in clarifying the scope of current planning requirements. The SPD cannot not introduce any new planning policy but could expand on current policies and set out a best practice approach, drawing on the Commons Select Environmental Audit Committee inquiry recommendations.

#### **4. Other Options Considered**

- 4.1. Another option considered was to produce an informal guidance note on Hand Car Washes. However the planning issues involved suggest that a more comprehensive approach is merited.

#### **5. Background - Context**

- 5.1. The Notice of Motion passed on 13 December proposed 'To have a supplementary planning document outlining best practice in terms of location and operation of hand car washes and valets in Cheshire East, taking into account the Government report on Hand Car Washes, local impact on the environment and location'
- 5.2. Following growing concerns regarding the proliferation of hand car washes in the UK and the resultant issues being dealt with by local authorities and the Environment Agency, The Commons Select Environmental Audit Committee held an inquiry into hand car washes in the summer of 2018 to examine:-
  - how the environmental impact of hand car washes compares to automatic ones
  - how they are regulated and
  - What steps the Government might take to ensure hand car washes are operated sustainably, encompassing employment conditions of workers.

- 5.3. Attached at Appendix 1 the relevant extracts and recommendations from the Commons Select Committee final report produced in November 2018. These will be used to inform the production of a Cheshire East Supplementary Planning Document on Hand Car Washes, the outline of which is attached at Appendix 2

### **The situation in Cheshire East**

- 5.4. During the whole of 2018 there were eight applications received for car wash facilities in Cheshire East, concerning six sites. Of these three were withdrawn, two refused and two approved with conditions. One is awaiting a decision.
- 5.5. This would seem to suggest that so far the planning system is being reasonably effective in ensuring that approval is only given when it is appropriate and all the necessary requirements have been met. This may not, of course, account for any hand car washes that are operating without planning permission which have not been drawn to the attention of the Council. Where a breach of planning control is known, the usual range of enforcement options are available to address the issue.
- 5.6. One example of recent enforcement being taken is the Union Street car wash in Sandbach (the subject of a dismissed planning appeal) which has recently been served with an Enforcement Notice, - which in itself has now just been appealed against. The applicants can operate from the site until the appeal and any subsequent outcome which may define the time period for compliance.
- 5.7. The Union Street appeal was dismissed on the grounds that the development would significantly harm the living conditions of neighbouring occupiers with regard to noise and disturbance. Such concerns are common among a number that may frequently apply to this type of development. These include:
- Standing traffic on residential streets creating noise, engine fumes, congestion and blocking of driveways and access points
  - Spray, noise, waste water, aerosol vapours caused by the jet washers, chemical ester release via rinsing equipment
  - Waste surface water impacting on main road drains and surrounding grass verges / green space.
  - Noise caused by jet spray and mechanised rinsing equipment, industrial vacuum cleaner noise used in valeting services associated with the car washing
  - Excessive and anti-social hours of working

- Unsightly Perspex screens and canopies

## **6. The Implications of the House of Commons Select Committee Report**

- 6.1. The conclusions and recommendations of the House of Commons Select Committee regarding planning and environmental legislation highlighted the need for greater cross agency working, for example between the Environment Agency, Planning Departments, United Utilities and HMRC to ensure that issues did not get 'lost' between different agencies..
- 6.2. It recommended the need for better Guidance for planners, such the reinstating of the withdrawn Environment Agency Advice, and for the Environment Agency to be more proactive in engaging with planning authorities to clarify when they should be consulted.
- 6.3. Finally the report pointed to the possible issuing of licenses and more regulation, as well as the need for effective enforcement from all regulatory bodies involved including planning.
- 6.4. These recommendations, where applicable to Cheshire East as a planning authority, have been taken forward via the the outline of a Supplementary Planning Document on hand car washes attached at Appendix2

## **7. The Proposed Supplementary Planning Document**

- 7.1 Whilst current planning applications have been determined within the existing policy framework, it is evident that this type of development is a cause of growing concern. Accordingly to afford the Council the best tools available, it is recommended that a short SPD be prepared to provide further localised guidance. This can be prepared in conjunction with partner agencies to ensure that a comprehensive approach is taken to the issue.
- 7.2 The outline of this document is attached at Appendix 2. It is recommended that officers work this into a succinct but effective SPD in collaboration with other services and partners. There may also be the opportunity to incorporate or reference future guidance from the Local Government Association. It is proposed that the SPD be considered again by the Strategic Planning Board prior to consultation later this year.
- 7.3 Multi-agency partnership work provides the best vehicle for co-ordinated management and regulation of hand car washes at a local level. To support local authorities on this issue in future, the Local Government Association intend to develop a short document focusing on issues relating to hand car washes and councils' regulatory responsibility in relation to them and highlighting existing good practice to address issues. They anticipate that

this will be completed later this year – and if so, this can be taken account of in the SPD.

## **8. Implications of the Recommendations**

### **8.1. Legal Implications**

Supplementary Planning Documents are guidance which adds further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan. They must be consistent with national planning policy, must undergo consultation and must be in conformity with policies contained within the Local Plan.

- The process for preparing Supplementary Planning Documents is similar to a Local Plan document. However, they are not subject to independent examination by the Planning Inspectorate. There are four main stages in their production as follows:
  - Preparation and informal consultation
  - Consultation
  - Consideration of representations and completion of final draft of the SPD
  - Adoption of the Supplementary Planning Documents

Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012 set out the requirements for producing Supplementary Planning Documents

### **8.2. Finance Implications**

- The cost of producing an SPD can be accommodated within spatial planning existing budgets.

### **8.3. Policy Implications**

- The Supplementary Planning Document does not introduce new policy but does highlight existing development plan policy.

### **8.4. Equality Implications**

- There are no direct implications for equality issues.

### **8.5. Human Resources Implications**

- There are no direct issues.

#### **8.6. Risk Management Implications**

- There are no direct implications for risk management.

#### **8.7. Rural Communities Implications**

- There are unlikely to be issues specifically for rural communities as hand car washes generally operate within an urban/ suburban setting.

#### **8.8. Implications for Children, Young People / Cared for Children**

- There are no planning implications for children and young people. However the SPD may signpost information about concerns over vulnerable people in general.

#### **8.9. Public Health Implications**

- There are public health implications such as water pollution prevention which will be dealt with in the. Supplementary Planning Document

### **9. Ward Members Affected**

- The issue of dealing with Hand Car Wash Sites is applicable throughout Cheshire East and therefore potentially affects all Ward Members.

### **10. Consultation & Engagement**

- The Supplementary Planning Document will need to undergo a six week period of consultation in line with current planning regulations.

### **11. Access to Information**

- The Council's website includes a section on [supplementary planning documents](#). The report of the House of Commons Environmental Audit Committee is available on the parliamentary [website](#).

### **12. Contact Information**

- Any questions relating to this report should be directed to the following officer:

Name: Adrian Fisher

Job Title: Head of Planning Strategy

Email: [adrian.fisher@cheshireeast.gov.uk](mailto:adrian.fisher@cheshireeast.gov.uk)

**APPENDIX 1 – Extract from House of Commons Environmental Audit Committee Report**

<b>1 Introduction</b>
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***Growth of hand car washes in the UK***

*1. Hand car washes have seen rapid growth over the past decade and now make up approximately 80% of the UK car wash sector by volume, according to the Petrol Retailers Association.*

*2. Estimates of as many as 10,000 to 20,000 hand car washes operating in the UK were repeated in many of our submissions.*

***Unregulated businesses***

*4. Hand car washes have been linked to non-compliance on environmental, health and safety regulations, non-payment of tax (VAT, income tax and business rates), lack of appropriate planning permission, poor accommodation for workers and modern slavery.*

*5. Researchers at Nottingham Trent University said that:*

*...in terms of owner, landlord and regulator responsibilities our research found a confused and permissive picture where many blind eyes were turned.*

*6. There are some legitimate regulated hand car wash brands and examples of good practice by independent outlets. In October, the Responsible Car Wash Scheme was launched to enable consumers to identify compliant operators.*

***Planning permission***

*7. Hand car washes sometimes set up and operate without planning permission. When hand car washes are established on the forecourts of former petrol stations or other sites, they may require planning permission for a change of use of the site.*

*The legal framework in the Town & Country Planning Act 1990 and supporting Government guidance states that any material change of use of land (as well as buildings) can constitute development that would require planning permission. However, the Local Government Association point out there is no statutory definition of 'material change of use'. Therefore, whether a new hand car wash would require planning permission would be determined by the individual circumstances of the case and in particular the significance of the change and impact on the use of the land, if there is one. For example, while a HCW operating from the site of a former public house might constitute a change of use for the site, a HCW operating from the site of a former petrol station (perhaps previously incorporating a car wash) might not.*

*8. The Car Wash Advisory Service alleged that hand car washes:*

*... Will very often start trading prior to any planning being sought. Our research also shows a significant lack of understanding in many planning departments regarding hand car washing, with many simply allowing land, warehouses and old forecourts to be used simply as a change of use and without any concern for the environmental impact as it is "not their job". Our investigations further show that many water companies have either no idea that a car wash has connected to their system without consent, or that again consent has been given without visiting the wash site to establish if a sludge trap/separator has been installed.*

*9. The Car Wash Advisory Service said that of 400 sites it investigated:*

- *230 had no planning permission.*
- *104 had planning in place but with conditions not met.*
- *40 were considered lawful and the council would not act.*
- *300 had no permission to access the foul sewer.*
- *11 were investigated by EA.*

*10. When taking planning decisions, local authorities are directed by the Town and Country Planning Act 1990 to take into account any 'material considerations'. This is not defined further in the Act, but the courts have held that "in principle ... any consideration which relates to the use and development of land is capable of being a planning consideration". There are several material considerations, such as noise and disturbance, capacity of the water system, and pollution impacts, which might be raised when a car wash business operates in a residential area.*



*11. The Environment Agency is a statutory consultee for some planning applications, such as development in flood zones or where developments potentially pose environmental risks, for example cemeteries or intensive farming. However, the Environment Agency does not currently need to be consulted regarding a hand car wash development unless it is in a sensitive environmental location, e.g. in an area with critical drainage problems, in a groundwater source protection zone or likely to affect such a zone.*

*12. Anglian Water suggested that the planning system could be utilised to minimise the environmental impacts of hand car wash businesses. It said that the planning process provides an opportunity to ensure the impacts of proposals are considered before they are put in place. However, it argued that it would not be proportionate for water companies to be consulted on every application.*

*13. The Chartered Institution of Water and Environmental Management raised concerns about how well planning conditions are enforced in practice. :-*

*Often the operatives put in a claim for permission to have certain things, including storm drains and things like that, but when you look they have put the signage and the awning up but have not done the heavy construction work. There is also a question in terms of licensing that some of the hoops people have to go through already exist, they are just not being enforced effectively. Therefore it could be a combination of things coming together to get more regulatory compliance.*

*14. Local Authorities have the responsibility to ensure any planning conditions are complied with. Councillor Rhodes representing the Local Government Association said that resource constraints limited Local Authorities ability to enforce planning regulations:*

### **Hand car washes across Europe**

*16. The Chairman of the Petrol Retailers Association Brian Madderson argued that the failure to enforce compliance with regulations had contributed to the growth of hand car washes in the UK:*

*It is extraordinary that we are virtually the only EU country where illegal hand car washing has proliferated over the last 10 years to the extent seen across the UK. This must result from the failure of key agencies to enforce their own regulations.*

## **2 Environmental pollution**

### **Impact on water quality**

*21. Car wash waste water can contain phosphates, detergents, surfactants, oils, silts/sediments, traffic film remover, rubber, copper and other metals.*

### **Water regulations**

*31. Hand car wash operators are subject to the trade effluent provisions in the Water Industry Act 1991. Section 118 of the Act makes it an offence to discharge trade effluent to a sewer without the written consent of the local water company. Anglian Water suggested 'very few hand car washes obtain discharge consent prior to conducting business*

*32. The Environment Agency is responsible for protecting water quality in England and regulates discharges into surface waters or onto or into the ground (and groundwater) through the environmental permitting system. It can issue fines to anyone who discharges waste water or sewage without a permit, or who breaches of their permit conditions.*

*Their advice is for hand car washes to always be connected to the foul sewer.*

### **Environment Agency approach**

*37. The Environment Agency said pollution from hand car washes was a minor problem compared to agricultural runoff and that most hand car washes in an urban setting, such as a petrol filling station were deemed to be connected to a foul sewer however there was room for enforcement where car washes are located where they will not have the correct drainage connections or interceptors.*

### **Guidance withdrawn**

41. There was some criticism of the Environment Agency during the inquiry for its decision to withdraw pollution prevention guidance on vehicle washing. The Northern Ireland Environment Agency, Scottish Environment Protection Agency and Natural Resources Wales have a document entitled *Guidance for Pollution Protection 13 (GPP 13): Vehicle washing and cleaning* which is based on relevant legislation and good practice. However, similar guidance was removed from the Environment Agency website in England when it was consolidated into Gov.uk in 2015 to reduce the volume of guidance.

## **Conclusions and recommendations**

### *Environmental pollution*

1. *The failures to enforce planning and environmental regulations at hand car washes must be rectified. Risk prioritisation by the Environment Agency and water companies should not translate into a permissive licence to pollute for hand car washes or other businesses.*
2. *The Environment Agency should reinstate its pollution prevention guidance for car washes. We recommend that the Agency also writes to the planning departments of Local Authorities across the UK to remind them that hand car washes should have interceptors installed and be connected to the foul sewer so that their wash water is treated rather than discharged directly into the environment. (Paragraph 44)*
3. *The Environment Agency should write to major supermarkets to remind them that any hand car washes operating in their car parks needs to have the appropriate drainage in place connecting to a foul sewer.*
4. *The Environment Agency should work with immigration, tax recovery and GLAA [Gangmasters and Labour Abuse Authority] enforcement to ensure that unannounced inspection of hand car washes are comprehensively investigated for a full range of potential regulatory breaches.*
5. *The Government should consider whether changes are necessary to the water regulations governing urban diffuse pollution. Water companies should be encouraged to map and report to the environment agency*

*where waste water is not properly being handled. This would help address the lack of data that currently hampers effective enforcement*

### ***Labour exploitation/ licencing***

*6. It is important to note that not all hand car washes violate labour, employment, taxation, health and safety and environmental regulations. Nevertheless, there appears to be widespread and flagrant rule breaking taking place at hand car washes across the country. This is unacceptable.*

*8. We encourage HMRC to explore potential tax evasion by hand car wash operators to establish the extent of material revenue leakage from the public purse from these operators and to develop strategies to recover tax due.*

*9. We welcome the Responsible Car Wash Scheme. The public must have confidence that hand car washes at major supermarkets operate within the law. The Government should ensure that large businesses hosting hand car washes include them in their Modern Slavery Act transparency statements.*

*10. To make enforcement easier, the Government should trial a licencing scheme for hand car washes that brings together all of the major compliance requirements, including on environmental pollution, into a single, more easily enforceable, legal requirement. The Government should also review whether the Modern Slavery Act 2015 could be updated to cover businesses as small as hand car washes.*

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## **APPENDIX 2**

### **Outline of Cheshire East Supplementary Planning Document on Hand Car Washes**

### **Planning permission**

The legal framework in the Town & Country Planning Act 1990 and supporting Government guidance states that any material change of use of land (as well as buildings) can constitute development that would require planning permission.

There is no statutory definition of ‘material change of use’. Further guidance can be provided to assist in determining where a change of use has occurred.

### **The Policy Framework**

A SPD must relate to adopted development plan policy. It is proposed that this SPD will derive from Local Plan Strategy Policy SD2 Sustainable Development Principles. This will be complemented by reference to other adopted policies. It is proposed to set out the key policy requirements that car washes must adhere to.

### **Environmental pollution**

Key concerns with hand car washes relate to their impact on the local environment – and pollution of light, noise, water and air quality. It is proposed to detail how such issues can be managed and mitigated.

### **Other Material considerations**

Planning applications should be determined in accordance with the development plan and other material considerations. There are several material considerations—such as residential amenity, highway safety or biodiversity –which might be raised when a car wash business operates in a residential area. Their impact and relevance will be further expanded in this section.

### **Statutory and other consultees**

This section will explain the role of external agencies in the determination of planning applications and how their guidance can be adopted at an early stage within applications.

### **Planning Conditions**

This section will set out the planning conditions that would commonly be applied to hand car washes. These may for example address matters of noise, water disposal or opening hours

### **Enforcement and Complaints**

Linkage will be made to existing enforcement protocols.

### **Further Information & guidance**

It is proposed to have a section with links to other relevant information, particularly relating to non-land use matters such as social and financial implications.