

Portfolio Holder Decision

Report Title: Final Draft Houses in Multiple Occupation Supplementary Planning Document

Portfolio Holder: Councillor Toni Fox, Portfolio Holder for Planning

Senior Officer: Frank Jordan, Executive Director of Place

1. Report Summary

- 1.1. This report seeks approval to publish the Final Draft Houses in Multiple Occupation Supplementary Planning Document (“HMO SPD”) along with its Report of Consultation for representations for a period of six weeks.
- 1.2. The draft HMO SPD was published for consultation between the 26th October and 23rd December 2020. It has been amended in response to comments received during that consultation. The Report of Consultation summarises this feedback and explains how it has been addressed (Appendix 1).
- 1.3. A screening exercise has been carried out to determine whether the HMO SPD gives rise to the need for further Sustainability Appraisal or Appropriate Assessment (under the Habitats Regulations). This screening assessment was consulted upon, alongside the draft HMO SPD and concludes that further assessment is not necessary (Appendix 3).
- 1.4. At its meeting on the 24th March 2021, the views of the Strategic Planning Board were sought on the Final Draft HMO SPD and the accompanying Report of Consultation. The Members of the Board requested that further consideration be given to the following:
 - Room sizes information at paragraphs 5.15 -5.16 reviewed to provide clarity and a link to current guidance;

- Paragraph 5.21 - internal waste storage areas should not be located in a bedroom;
- Paragraph 5.30 amended to refer to useable amenity space;
- Section 6 - further information to be provided about the sanctions available if HMO licenses were in breach.

1.5 These changes, which provide further explanation and clarity to the guidance in the HMO SPD, have been incorporated into the Final Draft. The Strategic Planning Board recommended that the Portfolio Holder for Planning approves and publishes the Final Draft HMO SPD and Report of Consultation for public representations for a period of six weeks.

2. Recommendations

That the Portfolio Holder for Planning:-

- 2.1 Considers the feedback received to the HMO SPD public consultation exercise held between the 26th October and the 23rd December 2020 and how it has been addressed in the Report of Consultation (Appendix 1).
- 2.2 Considers the views of the Strategic Planning Board set out at paragraph 1.4 of this report and how those views have been incorporated into the Final Draft HMO SPD (Appendix 2).
- 2.3 Agrees to the publication of the Final Draft HMO SPD (Appendix 2) and the Report of Consultation (Appendix 1) for public representations for a period of six weeks.
- 2.4 Agrees to the publication of the Strategic Environmental Assessment and Habitats Regulations Screening Report (Appendix 3).
- 2.5 Agrees to the publication of the associated Equalities Impact Assessment (Appendix 4).

3. Reasons for Recommendations

- 3.1 The preparation of the HMO SPD is one of ways that the Council can better manage concentrations of HMOs and improve standards.
- 3.2 Public consultation on the Draft HMO SPD took place between 26th October and 23rd December 2020. A total of 10 comments were received from 9 parties. A Report of Consultation has been prepared summarising the main issues raised and explaining how these issues have been addressed. The next step would be for the Council to publish the final draft of the HMO SPD

and Report of Consultation and seek public representations on them for six weeks.

- 3.3 Supplementary Planning Documents (“SPDs”) are not part of the statutory development plan but are a recognised way of putting in place additional planning guidance. They are capable of being a material consideration in determining applications involving relevant planning proposals.

4. Other Options Considered

- 4.1. The Council could choose not to proceed with the HMO SPD. Any planning application received for Houses in Multiple Occupation (“HMOs”) would continue to be assessed against adopted planning policies.

5. Background

- 5.1. HMOs are defined as single dwellings occupied by a number of separate households/ unrelated individuals. Under the Town & Country Planning (Use Classes) Order 1987 (as amended) a small HMO (Class C4) accommodates between 3 and 6 unrelated individuals and a large HMO (Sui Generis – outside of any use class) accommodates 7 or more unrelated individuals.
- 5.2. The Town and Country Planning (General Permitted Development) Order 2015 (“GPDO”) provides permitted development rights for the change of use of a dwelling (Class C3) to a small HMO (Class C4) without the need to apply to the Council for planning permission. The change of use of a dwelling to a larger HMO (Sui Generis) always requires the submission of a planning application.
- 5.3. Article 4 of the GPDO enables local planning authorities to withdraw specified permitted development rights in a defined area. Once an Article 4 Direction comes into force, a planning application is then required for the specific permitted development withdrawn. The withdrawal of permitted development rights does not imply that planning applications will be automatically refused if they are submitted. The submission of a planning application simply gives the local planning authority opportunity to consider a proposal against relevant planning policies, supplementary planning documents (where available) and any other material planning considerations.
- 5.4. At its meeting on the 3 December 2019, Cabinet considered a report which sought authorisation to make 3 non-immediate Article 4 Directions to remove permitted development rights for the change of use of dwellings to small HMOs (accommodating 3-6 unrelated individuals) in parts of Crewe. The removal of permitted development rights was authorised at that meeting and

justified based on evidence of high concentrations of HMOs in those particular areas together with a coincidence of local amenity issues.

- 5.5. In the report to Cabinet, it was stated that additional planning policy guidance in the form of a draft Supplementary Planning Document (SPD) would be prepared to align with the Article 4 Direction(s) coming into force.
- 5.6. The three non-immediate Article 4 Directions in parts of Crewe were made on the 6th October 2020 and public consultation about them took place between 19th October and 11th January 2021. The responses received have been considered and a report to recommend that they are now confirmed is progressing in parallel with the HMO SPD. If the Article 4 Directions are confirmed, they will come into effect on the 1 November 2021.
- 5.7. While it is not a requirement that an SPD is produced to support an Article 4 Direction, it is considered best practice to ensure their effective implementation. The SPD would be a material consideration in the determination of all planning applications for changes of use to HMOs across the borough, not just those dwellings that may be affected by an Article 4 Direction (once brought into effect).

The public consultation process

- 5.8. The requirements for public consultation on a Draft SPD are contained within the Town and Country Planning (Local Planning) (England) Regulations 2012. It is highlighted that the requirements have been subject to temporary changes¹ during the Covid-19 pandemic to enable public consultation to take place on planning policy documents without the need to place copies of documents at principal offices or other locations as appropriate. These temporary changes are currently in place until 31 December 2021.
- 5.9. The Council's adopted Statement of Community Involvement (October 2020) reflects the temporary changes introduced to address consultation during the pandemic.
- 5.10. Public consultation on the Draft HMO SPD initially took place for six weeks between the 26th October 2020 and 7 December 2020. The document was published on the Council's website and hard copies placed in public libraries in Cheshire East.

¹ See Local Planning, Development Management Procedure, Listed Buildings etc (England) (Coronavirus) (Amendment) Regulations 2020.

- 5.11 Public libraries were closed temporarily between the 5 November 2020 and 2 December 2020 due to lockdown restrictions. The consultation period was extended until the 23rd December 2020 to provide additional time for any comments to be made on the documents. Paper copies were made available on request in the event that any interested party had difficulties accessing documents.
- 5.12 In total, 10 responses were received from 9 parties. A summary of all the comments made alongside a proposed Council response is attached at Appendix 1.
- 5.13 The comments received covered a range of matters. However, the key issues raised relate to:
- Concern about the precise numbers of HMOs given that many do not require planning permission or licencing;
 - Poor quality of HMO accomodation;
 - Poor management of HMOs by landlords;
 - HMO properties should be limited to no more than 5% of the houses in any street;
 - Negative impact of HMOs upon the community/ local environment;
 - All HMOs should require planning permission and permitted development rights should not be used.
 - Conditions attached to planning permissions for HMOs should be enforced;
 - The SPD should include measures for sustainable heating and electric vehicle charging point;
 - Cycle storage should be ground level only

Amendments to the HMO SPD in the light of feedback

- 5.14 Proposed changes to the document in the light of representations include:
- Highlighting development plan policies regarding the incorporation of measures to minimise energy use and to encourage the installation of recharging points where this is feasible (see paras 5.22- 5.24).

- Clarification that ground level storage for cycles is preferable (Paragraph 5.28 of the SPD).
- 5.15 Additional text has also been inserted into the HMO SPD in relation to recommended levels of car parking and cycle storage at the request of the Cheshire East Highways Team (paragraphs 5.25-5.29).
- 5.16 Changes have also been made to paragraphs 5.15 -5.16, 5.21, 5.30 and Section 6 of the Final Draft HMO SPD to reflect the comments made by the Strategic Planning Board at its meeting on the 24 March 2021 (set out in section 1.4 of this report).

6 Implications of the Recommendations

6.1 Legal Implications

- 6.1.1 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 supplementary planning documents. Amongst other things, the 2012 Regulations require that an SPD contains a reasoned justification of the policies within it and stipulate that it must not conflict with adopted development plan policies. The National Planning Policy Framework and the associated Planning Practice Guidance sets out national policy and guidance about the circumstances in which SPDs should be prepared.
- 6.1.2 Supplementary Planning Documents are guidance which add 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.
- 6.1.3 Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012 set out the requirements for producing Supplementary Planning Documents.
- 6.1.4 Regulation 35 (Availability of documents) requires the placing of documents on the Council's website plus in principal offices and other locations as considered appropriate. As set out in paragraph 5.8, this requirement has been amended temporarily through the Local Planning, Development Management Procedure, Listed Buildings etc

(England) (Coronavirus) (Amendment) Regulations 2020 to enable consultations to take place without the need to place documents in Council offices or other locations.

6.1.5 The process for preparing Supplementary Planning Document(s) is similar in some respects to that of a local plan document. However, they are not subject to independent examination by the Planning Inspectorate. There are a number of stages in the production of the SPD:

- Publish a draft SPD for public consultation. Consultees were invited to submit comments on the Draft Houses in Multiple Occupation SPD for a period in excess of 4 weeks between the 26th October and 23rd December 2020;
- Consider feedback received and make any changes necessary (current stage);
- Publish the final SPD along with a Report of Consultation setting out who has been consulted in its preparation, the main issues raised in feedback and how those issues been addressed in the final draft SPD. Invite representations on the final SPD and Report of Consultation;
- Having considered representations, the SPD may then be adopted. Following adoption, it must be published along with an adoption statement.

Strategic Environmental Assessment/ Habitats Regulations Assessment

6.1.6 Strategic Environmental Assessment (“SEA”) involves evaluation of the environmental impacts of a plan or programme. The requirement for SEA is set out in the European Directive 2001/42/EC adopted into UK law as the “Environmental Assessment of Plans or Programmes Regulations 2004”.

6.1.7 The SEA Directive sets out a legal assessment process that must be followed. Often within the planning context, the SEA requirements are met by incorporating it within a Sustainability Appraisal (SA), which is a requirement for Development Plan Documents.

6.1.8 There is no legal requirement for Supplementary Planning Documents to be accompanied by Sustainability Appraisal, and this is reinforced in Planning Practice Guidance (PPG ref: 11-008- 20140306). However,

“in exceptional circumstances” there may be a requirement for SPDs to be subject to SEA where it is considered likely that they may have a significant effect on the environment that has not already been assessed within the SEA of the Local Plan. A screening assessment has been undertaken for the SPD (Appendix 3) which has determined that a SEA is not required for the SPD.

6.1.9 The screening assessment also addresses whether the SPD has a significant adverse effect upon any internationally designated site(s) of nature conservation importance and thereby subject to the requirements of the Habitats Regulations and concludes that the SPD could not have any conceivable effect on any European site and that a full appropriate assessment under the Conservation of Habitats and Species Regulations 2017 is not required.

6.1.10 The SPD may affect a person’s rights under the Human Rights Act 1998 in that Article 1 of the First Protocol: Protection of property protects a person right to enjoy their property peacefully. A public authority cannot take away a person’s property, or place restrictions on its use, without very good reason. The Council considers that the introduction of the SPD is in the public interest and warranted.

6.2 Finance Implications

6.2.1 The costs relating to the publication of the SPD and consultation report, including printing and staff time, are covered from existing planning budgets.

6.3 Policy Implications

6.3.1 The SPD will expand and amplify existing development plan policy.

6.4 Equality Implications

6.4.1 The Public Sector Equality Duty was created by the Equality Act 2010 in order to harmonise the previous race, disability and gender equality duties and to extend protection to the protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.

6.4.2 In summary, the Council must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.

- Foster good relations between people who share a protected characteristic and those who do not.

6.4.3 Having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

6.4.4 A copy of the Equality Impact Assessment Screening Report is attached at Appendix 4.

6.5 Human Resources Implications

6.5.1 There are no direct implications for human resources.

6.6 Risk Management Implications

6.6.1 There are no direct implications for risk management.

6.7 Rural Communities Implications

6.7.1 It is unlikely that there will be direct implications for rural communities given that the majority of HMOs tend to be located within the borough's towns. In the event that an HMO is proposed in a rural area, the SPD will provide additional guidance when considering planning applications.

6.8 Implications for Children & Young People/Cared for Children

6.8.1 Once adopted, the SPD would provide additional planning guidance when dealing with planning applications for HMOs. This guidance may have positive implications for those living within HMOs and other dwellings in the vicinity. This could benefit children and young people/cared for children.

6.9 Public Health Implications

6.9.1 Once adopted, the SPD would provide additional planning guidance when dealing with planning applications for HMOs. This guidance may have positive implications for those living within HMOs and other dwellings in the vicinity. This could benefit well-being and public health.

6.10 Climate Change Implications

6.10.1 The revisions made to the HMO SPD include reflecting development plan policies that seek to reduce carbon emissions by incorporating measures to reduce energy use and the provision of electric vehicle charging points where this is feasible (paragraphs 5.22 – 5.24).

7. Ward Members Affected

7.1 All wards are affected as the SPD will apply borough wide.

8. Consultation & Engagement

8.1 As noted earlier in the report, the draft SPD was subject to consultation between 26 October 2020 and 23 December 2020 . Following this, all comments have been considered and revisions made to the SPD (Appendix 2) so that it is ready for publication, alongside the Report of Consultation (Appendix 1).

9. Access to Information

9.1 The following documents are appended to this report:

Appendix 1: Report of Consultation
Appendix 2: Final Draft HMO SPD
Appendix 3: SEA/HRA Screening Report
Appendix 4: Equalities Impact Assessment

10. Contact Information

10.1 Any questions relating to this report should be directed to the following officers:

Name: Claire Coombs

Job Title: Principal Planning Officer

Email: claire.coombs@cheshireeast.gov.uk

Name: Jeremy Owens

Job Title: Development Planning Manager

Email: jeremy.owens@cheshireeast.gov.uk