

## **Portfolio Holder Decision**

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**Report Title:** Draft Biodiversity Net Gain Supplementary Planning Document

**Portfolio Holder:** Cllr Toni Fox - Planning

**Senior Officer:** Frank Jordan, Executive Director - Place

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### **1. Report Summary**

- 1.1. This report seeks approval to carry out four weeks of public consultation on the draft Biodiversity Net Gain Supplementary Planning Document ("SPD").
- 1.2. The preparation of an SPD involves two rounds of public consultation. This is the first consultation stage and will be followed by another opportunity to comment on a final draft version of the SPD, which is consulted upon alongside a consultation statement. Having also considered comments made at that stage, the SPD may then be considered for adoption by the council.
- 1.3. Once adopted, the SPD will provide additional planning policy guidance on the implementation of Local Plan Strategy policies SE3 'Biodiversity and Geodiversity', SE5 Trees Hedgerows and Woodland, SE6 'Green Infrastructure'. The SPD, once adopted, will be a material consideration in decision taking and support the delivery of key policies in the Local Plan Strategy.

### **2. Recommendations**

- 2.1. To consider the views of the Strategic Planning Board on the draft Biodiversity Net Gain Supplementary Planning Document, as set out at paragraph 5.10.
- 2.2. Subject to 2.1 above, to approve the draft Biodiversity Net Gain Supplementary Planning Document (Appendix A) for four weeks of public consultation.

- 2.3. To publish the associated Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report (“SEA”) (Appendix B).
- 2.4. To publish the associated Equalities Impact Assessment Screening Report (“EQIA”) (Appendix C).

### **3. Reasons for Recommendations**

- 3.1. The policy SE3 requires all development to positively contribute to the conservation and enhancement of biodiversity and establishes a requirement to support and improve ecological networks. This SPD provides guidance to applicants on how the Council expects these requirements to be achieved.
- 3.2. An SPD is not part of the statutory development plan. It is a recognised way of putting in place additional planning guidance and a material consideration in determining planning applications in the borough.
- 3.3. Providing clear 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.

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

- 4.1. The council could choose not to prepare an SPD on biodiversity. 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 to support the delivery and management of habitats in a consistent way that gives certainty to applicants and decision makers.

### **5. Background**

- 5.1. Cheshire East Council’s Corporate Plan sets out three aims. These are to be open, fair and green. In striving to be a green Council, a key objective is to enhance and protect the environment in Cheshire East and support sustainable development whilst addressing the climate emergency. As such, this SPD sets out guidance on policies contained in the Local Plan Strategy that will support delivery of this ambition by providing guidance on how development is expected to make a positive benefit to habitats in the borough.
- 5.2. Biodiversity net gain is the securing of an increase in the extent and value of habitats, through the development process and this SPD provides guidance on the process that applicants should follow to achieve this.

- 5.3. One of the key objectives of the LPS is for the Plan to support the conservation and enhancement of biodiversity, ecological and geological assets in the borough. The LPS includes policy SE3 (Biodiversity and Geodiversity) which sets out how development should the type of sites that contribute are likely to have high biodiversity and geodiversity value and a requirement that all development must 'aim to positively contribute to the conservation and enhancement of biodiversity and geodiversity'. The policy includes additional requirements for submission of construction management plans, landscaping, green infrastructure and open space proposals in certain circumstances.
- 5.4. This SPD aims to give greater clarity to developers, landowners, communities and decision makers on the issues of biodiversity and geodiversity in the development process. The draft Biodiversity Net Gain SPD provides additional guidance to applicants on how they should respond to the policy requirements in the LPS. It also 'signposts' sources of information, including relevant documentation and Council services.
- 5.5. The draft SPD has been jointly prepared by Strategic Planning and the Conservation and Heritage team. This has also been informed by input from the Development Management team.
- 5.6. The SPD contains several updates relating to how biodiversity should be addressed in a planning application. Specifically the SPD includes guidance on how applicants should assess habitats on their sites, the process through which the council expects design solutions to be assessed and how biodiversity metric calculations should be used to demonstrate that applicants preferred approach will deliver a net-gain in biodiversity.
- 5.7. Subject to the approval of the recommendations of this report, the SPD will be consulted on in accordance with the council's Statement of Community Involvement for a period of four weeks.
- 5.8. 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 a number of stages in their production:
- Publish the initial draft SPD for four weeks public consultation;
  - Consider feedback received and make any changes necessary;
  - Publish the final draft SPD, along with a consultation statement 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;

- Having considered representations, the SPD may then be adopted;
- 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 3 months of its adoption.

5.9. 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.

5.10. The Strategic Planning Board, at its meeting of the 21<sup>st</sup> April 2021, recommended that the Portfolio Holder for Planning approve and publish the draft Housing Supplementary Planning Document and associated documents for public consultation. Questions were asked at the meeting regarding the content of the document and focused on topics including the process for delivery of payments for offsite schemes, how Biodiversity Net Gain takes into account habitats or ecological assets on adjacent land, how investment in wetlands can be managed to avoid bird strike in the vicinity of Manchester Airport, how issues related to pre-clearance of sites can be addressed and how Cheshire East Council can use its own land holdings to retain trees that may be cleared from development sites.

## **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 SPDs. 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.

6.1.2 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.

6.1.3 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.

6.1.4 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 particular issues, such as design. SPDs are capable of being a material consideration in planning decisions but are not part of the development plan.

### **Strategic Environmental Assessment**

6.1.5 Strategic Environmental Assessment 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”.

6.1.6 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.

6.1.7 There is no legal requirement for SPDs to be accompanied by SA, 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 undertake Strategic Environmental Assessment where it is felt they may have a likely significant effect on the environment that has not been assessed within the SEA/SA of the local plan.

6.1.8 A screening assessment has been undertaken (in Appendix B) which has determined that a SEA (or an appropriate assessment under the Habitats Regulations) is not required for the SPD.

### **6.2. Finance Implications**

6.2.1. 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.

### **6.3. Policy Implications**

6.3.1. The SPD will expand and amplify existing development plan policies related to ecology. An SPD will give additional advice to applicants on how they can demonstrate they have complied with relevant policies of the development plan.

#### **6.4. Equality Implications**

6.4.1. 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.

6.4.2. The draft Biodiversity Net Gain SPD provides further guidance on the provision of new and managed habitats, and additional guidance on policy SE3 ‘Biodiversity and Geodiversity’. The SPD is consistent with the LPS which was itself the subject of an Equalities Impact Assessment (EqIA) as part of an integrated Sustainability Appraisal. A draft EQiA on the draft Biodiversity Net Gain SPD has been prepared (appendix C) and will be published alongside the draft SPD for comment.

#### **6.5. Human Resources Implications**

6.5.1. There are no direct implications for human resources.

#### **6.6. Risk Management Implications**

6.6.1. 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).

#### **6.7. Rural Communities Implications**

6.7.1. The draft Biodiversity Net Gain SPD seeks to provide further guidance on the provision and management of habitats and ecologically valuable sites in the borough.

#### **6.8. Implications for Children & Young People/Cared for Children**

6.8.1. The draft SPD seeks to provide additional guidance on the provision of habitats in the borough. The appropriate provision of habitats can help support sustainable communities, especially where habitat delivery is carefully provided and integrated with recreation and green space.

#### **6.9. Public Health Implications**

6.9.1. The draft SPD will contribute to the delivery of habitats and provide guidance on how applicants can use recreational space to improve biodiversity whilst providing green and amenity space.

## **6.10. Climate Change Implications**

6.10.1. The draft SPD highlights the importance of biodiversity, habitats and green space in addressing and mitigating the impact of climate change. Creating and restoring habitats that have been degraded can have an important role to play in creating carbon sinks ensuring the survival of species.

## **7. Ward Members Affected**

7.1. All wards will be affected as the SPD will apply across the borough, once adopted.

## **8. Consultation & Engagement**

8.1. It is proposed that the draft SPD will be subject to four weeks consultation. Following this, all comments will be considered, and changes made to the SPD, as appropriate, before a final version of the SPD is prepared for approval and further consultation.

## **9. Access to Information**

9.1. The following documents are appended to this report

Appendix A: Draft Biodiversity Net Gain Supplementary Planning Document

Appendix B: SEA / HRA Screening Report

Appendix C: Draft Equalities Impact Assessment Screening Report

## **10. Contact Information**

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

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