

Executive

27 September 2018

Report of the Director for Economy and Place

Portfolio of the Leader and the Executive Member for Economic
Development and Community Engagement

Supplementary Planning Documents to Support the Emerging York Local Plan

Summary

The purpose of this report is to provide details of Supplementary Planning Documents referred to in the Local Plan and to prioritise their production to aid development management decisions. This report asks the Executive to consider the SPDs to be produced and the SPDs to deliver as a priority.

Recommendation

1. Executive are asked to:
 - (i) Consider the SPDs identified in this report and accept Officer's recommendations to progress interim SPDs to inform development management decisions in advance of the adoption of the York Local Plan prioritising two SPDs regarding Affordable Housing and Green Infrastructure.

Reason: So that work on interim draft Supplementary Planning Documents can be progressed prior to adoption of the York Local Plan

Background

2. In the absence of an adopted statutory development plan, development management decisions are necessarily made on a case by case basis, having regard to material planning considerations, including national policy, ministerial statements, emerging policy (and the evidence base

underpinning those policies). CYC presently also takes into consideration planning guidance adopted by CYC (available on the CYC website) in relation to the following: Affordable Housing, Open Space, Developer Contributions to educational facilities, Houses in Multiple Occupation, House Extensions and alterations and the sub-division of dwellings which were prepared to align with the 2005 draft Local Plan.

3. It is recommended that following the submission of the Local Plan (2018) for examination, the Council now starts preparation of draft SPDs to align with the 2018 Submission Local Plan, which would be capable of being a material consideration in development management decisions if adopted by the Council, and would update the current interim planning guidance documents.
4. Whilst such interim draft SPDs would not have the same status as formal SPDs, and thus be afforded less weight, it is considered they will aid in providing consistency, clarity and fairness to all parties in the planning process, particularly if they have been afforded the same level of consultation and scrutiny as required by the 2012 Regulations, pending adoption of the Local Plan policies.
5. Such an approach is not without risk, and there have been cases where the consideration of interim planning policy in development management decisions has been challenged [*R (Skipton Properties Ltd) v Craven District Council* [2017] EWHC 534 (Admin)]¹. However, it is considered appropriate having regard to the particular circumstances in York and the stage that the emerging Local Plan has reached, together with the extensive up to date evidence base that underpins the Local Plan policies, that such an approach is taken.

Supplementary Planning Documents

6. Supplementary Planning Documents ('SPDs') are intended to add further details to policies within a Development Plan Document such as a Local Plan. They can be used to provide further guidance for

¹ This judge in this case upheld that the interim guidance regarding affordable housing should be dealt with through the Local Development Document (LDD) and could not be implemented through a guidance note or SPD given that the subject matter fell within the categories in Regulation 5(1)(a) of the 2012 Town and Country Planning Regulations. He said that this was an objective test to be determined by the Court and could not be avoided by the Council calling their guidance an 'approach' or by stating that it was not 'policy'. Mr Justice Jay found that the guidance covered 'development and use of land' that the Council wished to 'encourage' (being either affordable housing or residential development including affordable housing) and so fell within Regulation 5(1)(a)(i), and/or it was guidance which set out 'development management policies' that would be used to determine planning applications and so fell within Regulation 5(1)(a)(iv).

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 itself.

7. SPDs are intended to expand on high level 'strategic' policies contained within DPDs such as the emerging York Local Plan in order to guide development management officers, developers and development site landowners and their professional consultants. An SPD does not set policy itself but provides a framework for the implementation of policy.
8. An SPD must be produced under the provisions of the Planning and Compulsory Purchase Act 2004 and the Town and country Planning (Local Planning) England, Regulations 2012, and in accordance with the National Planning Policy Framework (NPPF). These regulations set out the process that the production of a SPD must follow which includes a requirement for the SPD to not be in conflict with an adopted Development Plan Document, to contain a reasoned justification of the policies contained within it and that before a SPD can be adopted it must prepare a statement setting out how the Local Planning Authority has consulted on the SPD, a summary of the main issues raised and how those issues have been addressed.

Draft Interim Supplementary Planning Document

9. The Local Plan was submitted for examination on 25th May 2018 but until such time as there is an adopted development plan in York, any draft SPD (even if consulted upon and approved by the Council to inform development management decisions) would only have the status of interim planning guidance and not have the same legal status of formal SPD in that decision making process. A draft SPD would be capable of being a material planning consideration, but the weight that could be attached to it would be more limited than that of formal SPD.
10. We currently have a number of draft SPDs including the Sub-division of Dwellings Draft SPD and the Houses in Multiple Occupation Draft SPD. Such draft SPDs seek to provide a framework for implementation of those policies within the Local Plan that has been submitted for examination. In the event that changes are made to any of the Local Plan policies through the examination process, SPDs will need to be reviewed to align with those policies.
11. In order to produce a draft interim SPD and for it to be adopted by the Council as interim planning guidance it is recommended that it be

considered by Local Plan Working Group and Executive prior to undertaking a city wide consultation in line with the requirements of the adopted Statement of Community Involvement (SCI, 2007). Following the consultation a report would be brought back to LPWG and Executive with the final draft interim SPD along with an accompanying statement detailing the comments received, a summary of main issues raised and how these issues have been taken into account. The draft interim SPD would then be published on the Council's website and would be capable of being a material consideration in planning decisions.

12. Once the Local Plan policies are formally adopted, it is anticipated that the preparation and consultation already undertaken to create the interim SPDs, (subject to reviewing whether any changes made to the Local Plan during the examination process affect the relevant SPDs in which case further changes and consultation would be required), will enable such SPDs to be adopted in accordance with the 2012 Regulations.

Proposed Interim Draft SPDs

13. The submitted Local Plan sets out that a number of SPDs will be produced in order to support and add detail to the Local Plan policies themselves. The following list indicates those SPDs that are currently referenced in the Local Plan:
 - Strategic Site SPDs (for each of the strategic development sites);
 - Sustainable Transport for Development;
 - Health and Well-being;
 - Cultural Well-being;
 - Green Infrastructure;
 - Affordable Housing;
 - Gypsy and Travellers and Travelling Showpeople;
 - Lower Derwent Valley;
 - Low Emission;
 - Sustainable Design and Construction;
 - Managing Environmental Quality;
 - Local Heritage List;
 - Self Build and Custom Build Housing; and
 - The review of existing draft SPDs including HMOs, Sub-division of dwellings and house extensions.

14. Following the submission of the Local Plan the Forward Planning Team has started to look at the progression of draft interim SPDs to help support the Local Plan strategic policies and to provide a more detailed framework to assist in the decision making process. Officers consider that given the other key priorities for the Forward Planning Team over the next 6 months which include the Local Plan examination, the progression of a number of neighbourhood plans and the waste and minerals plan examination, along with policy advice on planning applications that it is unable to progress more than two draft SPDs within existing resources.
15. We have therefore identified which SPDs officers consider to be of the highest priority to progress, subject to Member agreement. The initial view is that in order to provide a more consistent framework for planning decisions it would be helpful to progress the Affordable Housing Draft SPD and Green Infrastructure Draft SPD. Both these SPDs have also been highlighted previously by members as being key priorities in order to support the Local Plan policy position.
16. The Affordable Housing Draft SPD would seek to provide additional detailed guidance for developers on the affordable housing targets for development and an explanation of the site viability process. It would build on the policy framework of policy H10 (Affordable Housing) of the submitted Local Plan. In order to acknowledge changes in national policy the SPD would include clarification on tenure provision, transfer values and the application of vacant building credit. It will also consider inclusion and space standards and the calculation of off site financial contributions where appropriate.
17. It is anticipated that the Green Infrastructure Draft SPD would identify for protection and enhancement a connected network of green and blue infrastructure across the city. The SPD would sit beneath and help to implement the Local Plan policies setting out requirements for new development and best practice planning guidance to help inform decision making, explaining how green infrastructure should be a guiding principle for the design of new development and in planning for sustainable development. The production of this SPD also responds to Members request "*That Officers be instructed to prepare a report for a future Executive meeting providing a wider re-assessment of green space across the council's holdings*" as instructed at Executive Call-in on 23rd November 2017.

18. It is envisaged that the SPD would set out a clear vision for delivering a range of benefits including enhancing the physical, social and mental health of residents, making York a better place to live, work, invest, learn and play and seeking to join existing and new communities together by enhancing existing and creating new green links across the city. It would seek to address the need for a long term strategic investment framework and mechanisms for delivery identifying issues and opportunities for future management, creation and enhancement of green infrastructure assets.

Consultation

19. The production of SPDs will require city-wide consultation to be undertaken as set out in the Council's adopted Statement of Community Involvement. The Forward Planning Team will work with the Communications Team in order to undertake effective consultation and engagement.

Options

- (i) Consider the SPDs identified in this report and accept Officer's recommendations to progress interim SPDs to inform development management decisions in advance of the adoption of the York Local Plan prioritising two draft SPDs regarding Affordable Housing and Green Infrastructure.

Reason: So that work on interim draft Supplementary Planning Documents can be progressed prior to adoption of the York Local Plan

- (ii) Consider the SPDs identified in this report and advise alternative SPDs which should be identified as priorities for the Council to progress as interim SPDs to inform development management decisions in advance of the adoption of the York Local Plan.

Reason: So that work on interim draft Supplementary Planning Documents can be progressed prior to adoption of the York Local Plan

- (iii) Consider the SPDs in this report and advise Officers to not progress any SPDs in advance of the Local Plan.

Reason: To avoid potential risks of implementation prior to the adoption of the Local Plan.

Options Analysis

20. Officers have considered the production of SPDs to aid decision-making and have identified that it would be most helpful to progress the Affordable Housing Draft SPD and Green Infrastructure Draft SPD in order to update the current interim guidance. Both these SPDs have also been highlighted previously by members as being key priorities in order to support the Local Plan policy position. Although officers have highlighted that the risk experienced elsewhere in the adoption of interim guidance, it is considered that the evidence base underpinning these topics and the advanced stage of the Local Plan provides robust rationale for their implementation. Officers therefore recommend to Members to progress Option 1.
21. Members can also identify alternative SPDs for officers to prioritise as per option 2. This report identifies for Members consideration the SPDs set out in the Local Plan and existing draft SPDs which could be subject to review. As above, Members have previously expressed that Affordable Housing and Green Infrastructure as key priorities. Members should be aware that the preparation of SPDs is subject to the Examination of the Local Plan and available resources. In identifying more than two priority SPDs, the process of preparation may be elongated to allow all priorities to be actioned simultaneously or incur financial costs in relation to staffing.
22. Option 3 allows Members to choose to not progress any SPDs prior to the adoption of the Local Plan. This option takes consideration of the potential risk of implementing interim guidance prior to the adoption of the Local Plan as detailed under paragraph 5 of this report.

Next Steps

23. Following Members recommendations to Executive and Executive agreement, the Forward Planning will commence production of the SPDs agreed.

Implications

24. The following implications have been assessed:

- **Financial** – The work on the Local Plan is funded from specific budgets set aside for that purpose. The production of SPDs will require resources to prepare the SPD, including research, development and consultation thus incurring financial costs, which will need to be funded for the duration of their development.
- **Human Resources (HR)** – The production of an SPD and associated evidence base requires the continued implementation of a comprehensive work programme that will predominantly, although not exclusively, need to be resourced within EAP.
- **Equalities** – An Equalities Impact Assessment, including the Better decision-making tool, is attached as annex A
- **Legal** – The procedures which the Council is required to follow when producing a Supplementary Planning Document (SPD) derive from the Planning and Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Development) (England) Regulations 2012. The Council also has other legal duties including compliance with the Duty to Co-operate.
- **Crime and Disorder** – N/a
- **Information Technology (IT)** – N/a
- **Property** – N/a
- **Other** – None

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Report
Approved



Date 03/09/18

Specialist Implications Officer(s):

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Wards Affected: *List wards or tick box to indicate all*

 All

Annexes:

Annex A: Better Decision Making Tool

Abbreviations:

SPD – Supplementary Planning Document
DPD – Development Plan Document
LPWG – Local Plan Working Group
SCI – Statement of Community Involvement