

Committee Name and Date of Committee Meeting

Cabinet – 10 July 2023

Report Title

Local Plan: Adoption of Supplementary Planning Documents

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

All wards

Report Summary

Cabinet approval is sought to adopt the following Supplementary Planning Documents (SPD):

- Developer Contributions
- Biodiversity Net Gain
- Trees
- Preparing a Soils Strategy
- Development in the Green Belt (Revised)

Rotherham's Local Plan provides the framework for determining planning applications. Supplementary Planning Documents provide additional detail and guidance to support policies in the Local Plan. Once adopted, they are a material consideration to be taken into account when determining planning applications.

Supplementary Planning Documents help improve planning applications, which in turn can speed up the planning process and produce better outcomes for the community.

Recommendations

1. That Cabinet approves the adoption of the Supplementary Planning Documents at Appendices 1 to 5.
2. That Cabinet approves delegation to the Strategic Director for Regeneration and Environment, in consultation with the Cabinet Member for Jobs and the Local Economy, to amend and republish the Biodiversity Net Gain SPD if so required, to ensure conformity with the anticipated publication of Government regulations and guidance (paragraph 5.2 refers).

List of Appendices Included

Appendix 1	Developer Contributions SPD
Appendix 2	Biodiversity Net Gain SPD
Appendix 3	Trees SPD
Appendix 4	Preparing a Soils Strategy SPD
Appendix 5	Development in the Green Belt SPD (Revised)
Appendix 6	Consultation Statement
Appendix 7	Equality Part A – Screening
Appendix 8	Carbon Impact Assessment

Background Papers

National Planning Policy Framework

<https://www.gov.uk/guidance/national-planning-policy-framework>

Rotherham Local Plan 2013 – 2028

<https://www.rotherham.gov.uk/planning-development/guide-local-plan/1>

Adopted Statement of Community Involvement

<https://www.rotherham.gov.uk/downloads/download/80/statement-of-community-involvement>

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Local Plan: Adoption of Supplementary Planning Documents

1. Background

- 1.1 Rotherham's Local Plan provides the framework for determining planning applications. Supplementary Planning Documents (SPD) provide additional detail and guidance to support Local Plan policies. Once adopted, they are a material consideration to be taken into account when determining planning applications. The documents also offer further assistance and clarification to applicants when preparing planning applications. SPDs provide detailed guidance to landowners, planning agents and developers to help improve the quality of submitted planning applications, which in turn can speed up the planning process and produce better outcomes for the community.
- 1.2 Following adoption of the Local Plan Core Strategy (2014) and Sites and Policies documents (2018), the Council is preparing new planning guidance documents. Following Cabinet approval (Cabinet 11 July 2022, minute 32 refers), public consultation was undertaken on the following draft Supplementary Planning Documents between 12 September and 17 October 2022:
- Developer Contributions
 - Biodiversity Net Gain
 - Trees
 - Preparing a Soils Strategy
 - Development in the Green Belt (Revised)

2. Key Issues

- 2.1 Consultation on the draft SPDs was undertaken in line with The Town and Country Planning (Local Planning) (England) Regulations 2012 and the Council's adopted Statement of Community Involvement. In response to the consultation the Council received 50 representations, broken down as follows:

Document	Number of representations received
Developer Contributions SPD	8
Biodiversity Net Gain SPD	13
Trees SPD	9
Preparing a Soils Strategy SPD	7
Development in the Green Belt SPD (revised)	11
Non-specified	2
Total	50 representations

- 2.1.1 All representations received have been considered and the Consultation Statement at **Appendix 6** provides details of the issues raised, the Council's response and how the SPDs have been amended as a result.
- 2.2 A summary of the key elements of each document and the changes made following consultation is provided below:

2.3 Developer Contributions SPD

2.3.1 Sets out the process through which the Council will seek contributions from developers towards mitigating the impacts of development. Specifically:

- Education provision (e.g. school places)
- Library provision and library space
- Biodiversity Net Gain plus 10%
- The value of amenity trees
- Green Infrastructure, green spaces, outdoor sport and recreational provision
- Transport and related infrastructure
- Community Access Plans and other management or operational plans
- Local primary health care provision (e.g. medical centres)

2.3.2 Provides clear guidance to mitigate the impacts of future development proposals and to ensure that any gaps in provision of social and community facilities arising from new housing (for instance) are provided for by the developer; unless there are clearly substantiated and justified reasons as to why a developer could not viably fund such planning contributions.

2.3.3 Establishes the requirements for on-site or off-site contributions, or financial contributions in lieu, provided via S106 planning obligations to mitigate impacts arising from the development.

2.3.4 Seeks to ensure that new development accords with adopted planning policies and is socially, economically and environmentally sustainable.

2.3.5 S106 planning contributions are in addition to the payment of the Community Infrastructure Levy (CIL). They can be sought alongside CIL for the same development but must meet the tests set out in legislation.

2.3.6 Changes to the Developer Contributions SPD following consultation

2.3.6.1 Representations received to the draft SPD have been carefully considered, and in the light of the representations also received to the draft Trees SPD and Biodiversity Net Gain SPD, appropriate amendments have also been made to the Developer Contributions SPD where this is considered necessary.

2.3.6.2 Comments were received on viability, costings and thresholds where contributions will apply. Whilst illustrative examples of costs have been provided within this emerging SPD, these are not necessarily the up-to-date costs that will be used to determine all contributions via S106 planning obligation but are illustrative of the methodology presented for seeking appropriate contributions. It is considered the methodology presented in the SPD is sound and appropriate up-to-date costings will be sought at the time of application submission.

- 2.3.6.3 In addition, comments were received on natural environment, sports facilities, active travel and transport. These have been reviewed and changes, if necessary, have been made to the draft SPD.
- 2.3.6.4 The Council through its Transportation Team will also consider any potential enhancements to network rail infrastructure in the light of its commitment to Active Travel.
- 2.3.6.5 Issues raised regarding the viability of delivering planning obligations have been carefully considered by the Council in drafting the SPD. It is considered that the methodology and approach set out in the SPD provides a robust basis for negotiating S106 planning obligations in accordance with the National Planning Policy Framework and accompanying National Planning Policy Guidance.

2.4 **Biodiversity Net Gain SPD**

2.4.1 Sets out the Council's approach to seeking Biodiversity Net Gain (BNG) in line with the requirements introduced by the Environment Act (2021). This reflects Objective 10 of the Core Strategy which aims to manage the Borough's biodiversity through planning policies and supports the Council's Climate Change Action Plan.

- Introduces the BNG Metric – a habitat-based approach designed to provide ecologists, developers, planners and other interested parties with a means of assessing changes in biodiversity value (losses or gains) brought about by development or changes in land management.
- Sets out how to assess the biodiversity value of a site and the potential impacts arising from new development on the natural environment.
- Sets out how to apply the mitigation hierarchy and clarifies that where irreplaceable habitats cannot be offset, then planning permission should be refused, in accordance with national and local planning policy.
- Sets out how to calculate Biodiversity Net Gain.
- Provides a biodiversity checklist for applicants.

2.4.2 Changes to the Biodiversity Net Gain SPD following consultation

Representations were received to this draft SPD from a variety of organisations. All representations have been read and fully considered and subsequent changes made to the draft SPD. This is a new field of work and from November 2023, each developer (with only a few exceptions for householder and other minor development schemes) will need to demonstrate that their proposals deliver biodiversity net gain plus 10% (BNG+10%). Some of this net gain may be able to be delivered on site but there will also be a need to off-set biodiversity enhancements to other land that is not proposed to be developed.

2.4.3 Given the complexity and newness of these BNG+10% proposals, the draft SPD is based on best practice guidance from Defra and did attract substantial comment and representation. Following on from the consultation, a number of further learning opportunities have presented themselves:

- Training has been offered by the Planning Advisory Service (on behalf of Defra and Natural England).
- Through this training the work of other Councils involved in pilot projects over the last ten years was presented and shared with the network of other local authorities; this has clarified how other local government colleagues are approaching these issues and matters.

2.4.4 In the light of these learning opportunities, the Council's ecologist along with Planning officers, has worked through all representations received being mindful of emerging national guidance and secondary legislation. The draft SPD has been amended to better reflect all current known requirements of the legislation and to clarify and expand on areas and issues of concern raised through the consultation.

2.5 **Trees SPD**

2.5.1 Sets out guidance on the protection of existing trees on-site, and provision of replacement and new trees, with a view to protecting, enhancing and increasing tree cover within Rotherham. This reflects Objective 13 of the Core Strategy which aims to reduce the Borough's carbon emissions over the plan period and supports the Council's Climate Change Action Plan.

- Summarises the issues that can arise on development sites with existing trees, and what needs to be considered when planting replacement trees.
- Introduces the methodology to formalise current practice in negotiating replacement trees with developers.
- Addresses the approach to be taken to trees: from the initial design stage, through to their consideration in the planning application and future development on-site, and subsequently ongoing management and maintenance of trees.
- Briefly reviews the legislation supporting tree protection.

2.5.2 Changes to the Trees SPD following consultation

The representations received have made some helpful recommendations to ensure the SPD is comprehensive on all aspects in relations to trees in development.

2.5.3 The references to policies and legislation have been strengthened and clarified. This will help applicants and officers to consider not only the effects on the trees but the associated impacts and mitigations on blue and green infrastructure, habitat, nature recovery and historic assets.

2.5.4 The Council also acknowledges the need for the SPD to emphasise the importance of general tree planting in development and careful management, as it will contribute to the enhancement of the natural environment and mitigate the impact of climate change.

2.5.5 In addition to changes as a result of representations received, the Council has made changes to the layout and sections of the SPD for clarity.

2.6 **Preparing a Soils Strategy SPD**

- 2.6.1 Sets out detailed guidance on the required assessments of soils to be undertaken on-site, when these are required, and how to undertake them. It also summarises best practice in dealing with soils on development sites and supports the Council's Climate Change Action Plan through the protection of biodiversity of soils.
- Sets out the importance of soils within the Borough and the ecosystem services they provide, including providing support for plants and animals. Also stresses the fragility of soils.
 - Provides a summary of the issues that may arise when dealing with soils on a development site.
 - Provides a summary of DEFRA and British Standards in dealing with soils.
 - Sets out the requirements before and during development occurring on-site, and the replacement of soils where needed.

2.6.2 Changes to the Preparing a Soils Strategy SPD following consultation

- 2.6.2.1 The representations received have been carefully considered. Clarifications have been made to the SPD to include additional references acknowledging the requirement for statutory consultation with Natural England and to reflect available national guidance.
- 2.6.2.2 One respondent raised issues with the wording provided in the Policy Guidance Notes. These issues have been carefully considered alongside the representations from the Environment Agency and Natural England.
- 2.6.2.3 The guidance within the SPD is specifically concerned with protecting the ecological quality of the soils and subsoil for the wider benefit of biodiversity. The purpose of the SPD is not to provide guidance on contaminated and unstable land as this is already covered by Local Plan policies CS27 'Community Health and Safety' and SP54 'Contaminated and Unstable Land'. In considering planning applications with respect to this issue, the views and guidance from the Council's Environmental Health Team will be sought.

2.7 **Development in the Green Belt SPD**

- 2.7.1 Sets out amendments to adopted SPD No. 3 Development in the Green Belt.
- 2.7.2 Following the adoption of the SPD in June 2020 and its implementation, several amendments were identified that will clarify application of the SPD to buildings and previously developed land within the Green Belt:
- Extensions to existing buildings (para 18).
 - Replacement buildings (para 31).
 - Change of use of land (Green Belt guidance 6 second para).
 - Appendix 1 of the SPD (paras 91, 92, 97, 98 & 100).

2.7.3 Changes to the Development in the Green Belt SPD following consultation

The SPD has been prepared in line with the policies in the Core Strategy and Sites & Policies Documents and the proposed revision to the SPD is to clarify the definition of secondary buildings.

2.7.3.1 The recent High Court decision in Warwick District Council v Secretary of State is significant to the interpretation of para.149(c) of the NPPF, confirming that “an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension”. The Council has revised the SPD to reflect this decision.

2.7.3.2 Some representations related to specific issues regarding Green Belt allocations and policy, however the Council is not currently reviewing the Green Belt boundary or policies in the Sites and Policy Documents. These representations are not relevant to the proposed changes to the guidance in the SPD and therefore no changes have been made to the document.

2.7.3.3 In addition to changes as a result of representations received, the Council has updated the paragraph numbers referring to the NPPF to reflect the latest 2021 publication. The contents of the relevant paragraphs remain unchanged.

2.8 Once adopted, these documents will become an essential part of the decision-making process when determining planning applications.

3. **Options considered and recommended proposal**

3.1 **Option 1: Adopt the SPDs with the amendments**

3.1.1 Adopting the documents as SPD will provide clear guidance to applicants, helping speed up the planning process by minimising time-consuming amendments or negotiations often necessary following submission of planning applications. Adoption of the documents will ensure they have more weight in planning decision-making and provide support for the Council to refuse non-compliant planning applications. This will give greater certainty to the community and prospective developers on the Council’s preferred approach to the subjects covered by SPDs.

3.1.2 The amendments detailed in the Consultation Statement at **Appendix 6** are considered necessary to ensure the guidance contained in each document is robust, clear, relevant, and appropriate.

3.1.3 Obtaining delegation to the Strategic Director for Regeneration and Environment, in consultation with the Cabinet Member for Jobs and the Local Economy, to amend and republish the Biodiversity Net Gain SPD if so required, would ensure conformity with the anticipated publication of Government regulations and guidance (paragraph 5.2 refers) in an efficient and timely manner.

3.2 **Option 2: Adopt the SPDs without amendments**

3.2.1 The amendments detailed in the Consultation Statement at **Appendix 6** are considered necessary to ensure the guidance contained in each document is robust, clear, relevant, and appropriate. Not incorporating these amendments into the final Supplementary Planning Documents will make the guidance less robust and reduce the ability of the Council to withstand challenge (for example at planning appeal); it may result in the need to revise the SPDs in the near future.

3.3 **Option 3: Decline to take forward the adoption of SPDs**

3.3.1 There is no requirement that the Council prepares adoptable Supplementary Planning Documents. However, they provide valuable additional guidance to applicants by providing clarity on Local Plan policy requirements and enable the Council to refuse non-compliant planning applications.

3.3.2 Should the Council decide not to adopt the documents they will have limited weight in the future when determining planning applications. The weight to be given to the documents as “good practice guidance” will be considerably less than if they were adopted as SPD.

3.4 **Option 1 is the recommended option**, to ensure that the documents are robust and have appropriate weight when making planning decisions.

4. **Consultation on proposal**

4.1 Consultation was undertaken via the Council’s planning consultation website between 12 September and 17 October 2022. This notifies interested parties (including statutory consultees, members of the public and other stakeholders) on the Local Plan consultation database and allows and encourages comments to be submitted online, in accordance with the Council’s adopted Statement of Community Involvement. A notice was also placed in the local press. Copies of the SPDs were posted to consultees on request, with a small charge to cover printing and postage. A Members seminar, including a presentation and Q&A session on the draft SPDs, was held on 4 October 2022 at the Town Hall and 11 Councillors attended.

4.2 Preparation of the final SPDs was undertaken by Planning Policy officers, or in conjunction and consultation with, other relevant services:

- The Developers Contribution SPD and Biodiversity Net Gain SPD were prepared by a specialist consultant in liaison with Council officers (Affordable Housing officer, Green Spaces team, Landscape officers, and Ecologist).
- The Green Spaces Team has prepared the Trees SPD and supported the review of the final version.
- The Ecologist within the Green Spaces Team has prepared the Soils Strategy SPD and supported the review of the final version.
- The Development Management Service within the Planning Service has reviewed all the SPDs.

5. **Timetable and Accountability for Implementing this Decision**

- 5.1 Subject to approval by Cabinet, the final SPDs and the accompanying consultation statement will be published on the Council's website and be used for pre-application advice and decision making on planning applications. All those who provided comments on the draft documents will be notified.
- 5.2 The Biodiversity Net Gain SPD is subject to some uncertainty due to emerging Government guidance on the implementation requirements on local planning authorities. The requirements of the Environment Act 2021 relating to BNG+10% come into force in November 2023, however at the time of writing the secondary legislation and guidance is still to be published by Government. It is possible that the Biodiversity Net Gain SPD may need minor amendments to ensure conformity with Government regulations and guidance when published. As this would be to align with secondary legislation, further consultation would not be required, and the Council would amend and republish the SPD. Recommendation 2 to the report reflects this position and seeks a pragmatic approach to dealing with this uncertainty.
- 5.3 To achieve consistency with the Council's document style, minor changes to numbering, formatting and images may be made prior to publication of the documents.

6. Financial and Procurement Advice and Implications

- 6.1 This consultation was carried out via the Council's planning consultation website and therefore the costs associated with this consultation were limited to minimal printing and advertising costs. These costs have been managed within the Service's existing approved revenue budget.
- 6.2 There are no direct procurement implications associated with the recommendations detailed in this report.

7. Legal Advice and Implications

- 7.1 The Supplementary Planning Documents (SPDs) and Appendices 1 to 5 of this report provide detail and guidance to support policies in the Rotherham Local Plan. The adoption of these SPDs strengthens the position and application of the Local Plan. The drafting and consultation in relation to the SPDs is in compliance with the requirements of the Council's adopted Statement of Community Involvement and the Town and Country Planning (Local Planning) (England) Regulations 2012 and the Town and Country Planning Act 1990 as amended.

8. Human Resources Advice and Implications

- 8.1 There are no direct human resources implications arising from the recommendations in this report.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 The SPDs will assist in delivering the Council's strategy and policies set out in the Local Plan. These include promoting and delivering sustainable patterns of

development, the creation of mixed and sustainable communities, reducing pollution, providing and protecting community resources and facilities, and conserving and enhancing the quality of the built and natural environment.

10. Equalities and Human Rights Advice and Implications

- 10.1 The Supplementary Planning Documents (SPDs) will assist in delivering the Council's strategy and policies as set out in the adopted Local Plan. These policies include promoting and delivering sustainable patterns of development, the creation of mixed and sustainable communities, protecting community resources and facilities, and conserving and enhancing the quality of the built and natural environment. An Integrated Impact Assessment (which included Equalities Impact Assessment) was prepared to support the adoption of the Core Strategy (2014) and Sites and Policies Document (2018). These two documents, along with the Barnsley, Doncaster Rotherham Joint Waste Plan (2012), make up the Rotherham Local Plan.
- 10.2 The SPDs will be used by applicants submitting planning applications across the borough. The outcome will be planning decisions which comply with relevant planning policies. SPDs aid understanding of Local Plan policies and provide additional guidance to aid their implementation, but they do not create new planning policy.
- 10.3 The SPDs have been subject to public consultation and comments received have been considered in preparing the final documents.

11. Implications for CO₂ Emissions and Climate Change

- 11.1 Climate change poses a significant threat to environments, individuals, communities, and economies on local, national, and international scales. In recognition of this the Council has aimed to be net carbon neutral as an organisation by 2030, and for Rotherham as a whole to achieve the same position by 2040.
- 11.2 The Supplementary Planning Documents provide further guidance and clarity to developers in bringing forward planning applications for development; reducing the carbon footprint of development; promoting higher sustainable construction standards; building climate resilient dwellings; minimising impacts of carbon emissions harmful to local air quality, the natural environment and health.
- 11.3 The Biodiversity Net Gain, Trees and Soils SPDs, will assist in the mitigation of CO₂ emissions. They aim to further protect the natural environment and limit the impacts of new development on the natural environment and to seek compensation off site for new development proposals where on-site mitigation and enhancement is not possible. The SPDs will provide guidance and clarity to developers to:
- Reduce the carbon footprint of their development.
 - Provide improvements and enhancements to the natural environment that will lead to improved health of local communities.

- 11.4 The willingness of developers to work towards zero carbon developments is a key driver to change. Future government legislation will effectively regulate development on site to be zero carbon. Without legislation, the Council can promote best practice through its Development Plan Documents and guidance but cannot insist on carbon-neutral development.
- 11.5 There is a significant demand for new homes and amenities in the Borough. The Council is committed to determining planning applications in accordance with Local Plan policy and SPDs, and in doing so is seeking to reduce, mitigate and adapt to climate change.

12. Implications for Partners

- 12.1 The implications for partners or other directorates are mainly associated with the additional guidance provided within the SPDs, regarding the implementation of Local Plan policies.

13. Risks and Mitigation

- 13.1 The Council may be open to legal challenge should the SPDs not be produced in accordance with The Town and Country Planning (Local Planning) (England) Regulations 2012. Legal advice will be sought, as necessary.

14. Accountable Officers

Simon Moss, Assistant Director – Planning, Regeneration and Transport
Nigel Hancock, Head of Planning and Building Control

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	26/06/23
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	21/06/23
Assistant Director, Legal Services (Monitoring Officer)	Phil Horsfield	23/06/23

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