

Cabinet

13 November 2024

**Biodiversity and Non-designated
Heritage Asset Supplementary Planning
Documents**

Ordinary Decision



Report of Corporate Management Team

Amy Harhoff, Corporate Director of Regeneration, Economy, and Growth

Councillor Elizabeth Scott, Cabinet Portfolio Holder for Economy, and Partnerships

Electoral divisions affected:

Countywide.

Purpose of the Report

- 1 The purpose of this report is to seek Cabinet's approval to commence consultation on the second draft of the 'Biodiversity' and 'Non-designated Heritage Asset' (NDHA) Supplementary Planning Documents (SPDs). The SPDs support the County Durham Plan (CDP) adopted in October 2020.

Executive summary

- 2 The CDP seeks to ensure that County Durham is a successful place to live, work, invest and visit by focussing on supporting and creating vibrant communities. The plan is a comprehensive document covering all aspects of planning however, to provide more detailed advice or guidance on the policies in the plan, Government guidance allows the preparation of SPDs. SPDs are capable of being a material consideration in planning decisions but are not part of the development plan.
- 3 The Biodiversity SPD is a key action in the council's Ecological Emergency Action Plan (EEAP). It provides guidance to improve biodiversity delivery within new developments.

- 4 The NDHA SPD sets out guidance defining what non-designated heritage assets are in the context of national and local planning policy and establishes a selection criteria against which the county's non-designated heritage assets are to be identified and assessed.
- 5 If agreed, consultation will be undertaken on the SPDs from 25 November 2024 to 12 January 2025. All consultation will be undertaken in accordance with the council's Statement of Community Involvement.

Recommendations

- 6 Cabinet is recommended to:
 - (a) agree the second draft of the Biodiversity SPD as detailed in Appendix 2 and NDHA SPD as detailed in Appendix 4 for consultation from 25 November 2024 to 12 January 2025; and
 - (b) agree to delegate to the Corporate Director of Regeneration, Economy, and Growth, in consultation with the Portfolio Holder for Economy and Partnerships, the power to make minor modifications and adopt the documents following consultation (if significant changes are required then the SPDs will need to return to Cabinet for adoption).

Background

- 7 At a meeting of Full Council on 21 October 2020 the council adopted the CDP. The plan seeks to ensure that County Durham is a successful place to live, work, invest and visit by focussing on supporting and creating vibrant communities. The plan is a comprehensive document covering all aspects of planning however, to provide more detailed advice or guidance on the policies in the plan, Government guidance allows the preparation of SPDs. SPDs are capable of being a material consideration in planning decisions but are not part of the development plan.

Biodiversity SPD

- 8 The council declared an ecological emergency in April 2022 and the Biodiversity SPD is a key action in the council's EEAP. The action plan is a key reporting tool against the council's strengthened biodiversity duty under the Environment Act 2021. The council must report against the biodiversity duty and this SPD is a deliverable action that complies with this duty.
- 9 The SPD provides guidance to improve biodiversity delivery within new developments. It sets out:
- (a) County Durham's ecological importance and the existing legislative and policy framework;
 - (b) what the council expects to be included and addressed within planning applications in relation to biodiversity;
 - (c) a design guide on how to build biodiversity into development;
 - (d) guidance in relation to the requirement introduced by government this year (2024) for most developments to achieve a minimum 10% net gain in biodiversity; and
 - (e) guidance on Habitat Regulations and Appropriate Assessment.
- 10 The first draft of the Biodiversity SPD was consulted on from 3 June to 14 July 2024. There were nine consultees who made representations on the SPD. Representations were generally supportive of the principle of the SPD, although there were objections from representatives of the industry to the SPD encouraging applicants to exceed the minimum statutory requirement of 10% Biodiversity Net Gain (BNG) where possible. In the context of the ecological emergency, it is considered appropriate to encourage applicants to maximise gains for biodiversity

wherever possible, and applicants in our experience are seeking to exceed the minimum requirement where opportunities exist.

- 11 A full statement of consultation is detailed in Appendix 3 and the key changes made following the consultation are:
- (a) a document roadmap has been added and link to the Ecological Emergency Action Plan;
 - (b) minimum dimensions added for gaps to allow hedgehog access;
 - (c) recommendations added on number of roosting/nesting features to be incorporated into new developments;
 - (d) reference to s39 legal agreements removed;
 - (e) clarification added that that the council's preference is that where biodiversity units need to be delivered off-site that local off-site options that support the delivery of the Local Nature Recovery Strategy are explored in the first instance;
 - (f) further information on BNG and small sites, additionality, irreplaceable habitats and stacking added;
 - (g) a sub-section on Nutrient Neutrality has been added; and
 - (h) minor corrections, formatting changes and points of clarification.

Non-designated Heritage Asset SPD

- 12 At its meeting on 15 November 2023 Cabinet agreed a local list of Non-designated Heritage Assets for eight pilot areas across the county, and for the development of internal governance arrangements for the further identification of NDHAs via the production of an SPD. Accordingly, the NDHA SPD sets out guidance defining what non-designated heritage assets are in the context of national and local planning policy and establishes a selection criteria against which the county's non-designated heritage assets are to be identified and assessed. It includes the following:
- (a) procedure for identifying non-designated heritage assets;
 - (b) assessing the impact of development on non-designated heritage assets (decision making on planning applications);
 - (c) identification criteria;
 - (d) selection and ratification process;

- (e) access to information;
 - (f) process for nominations and deletions; and
 - (g) limitations to identification.
- 13 The first draft of the NDHA SPD was consulted on from 3 June to 14 July 2024. There were eight consultees who made representations to the SPD. Representations were generally supportive of the principle of the SPD, however some changes were requested by four consultees. It was suggested that the SPD could be tightened up in some areas, for example clarifying how the process works alongside neighbourhood plans (some of which identify local heritage assets), detail required including in relation to the scoring process, and landscape assets and process matters, and recognition required in relation to specific heritage assets.
- 14 A full statement of consultation is detailed in Appendix 5 and the key changes made following the consultation are:
- (a) clarification has been added to confirm that the SPD will not be applied retrospectively to previously identified assets, specifically those within neighbourhood plans - the SPD will not undo previous community work in identifying NDHA;
 - (b) additional detail has been added giving examples of assets which may fall under each asset type;
 - (c) additional clarity has been added around the scoring criteria especially the threshold for assets being identified as NDHA and when they may be considered for the local list; and
 - (d) clarification has been added around the legislative and policy context of archaeology and the lower threshold for being identified as NDHA has been explained in greater detail.

Next Steps

- 15 If agreed consultation will be undertaken on the SPDs from 25 November 2024 to 12 January 2025. All consultations will be undertaken in accordance with the council's Statement of Community Involvement. Subject to the scale of the changes required following the consultation the Biodiversity SPD and NDHA SPD can be adopted using delegated powers.

Background papers

County Durham Plan – Adopted 2020

Other useful documents

None

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Appendix 1: Implications

Legal Implications

The Town and Country Planning (Local Planning) (England) Regulations 2012 sets out how to prepare development plan documents and SPDs. Before the SPDs can be adopted, it is necessary to undertake two rounds of public consultation.

Finance

As the SPDs progress there will be some costs for consultation and printing which will be met from the Strategy and Delivery Team budget.

Consultation and Engagement

The programme of consultation has been agreed with the council's corporate communications team and the council's consultation officers group and will be undertaken in accordance with the Statement of Community Involvement and the 2012 Local Plan Regulations.

Equality and Diversity / Public Sector Equality Duty

The council acknowledges that, in exercising its functions, it has a legal duty under the Equality Act 2010 to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. This duty applies to all people defined as having protected characteristics under that legislation. An equality impact assessment was prepared for the CDP that considered the impact of all of the plan's objectives and policies including those that relate to the SPDs for consideration.

Climate Change

Climate change is a thread running through the CDP. The importance of tackling and adapting to climate change is recognised in the plan's vision, objectives, sustainable development statement, spatial strategy, and a number of policies. As the SPDs sit below and reflect the policies and strategies of the CDP they similarly reflect this approach.

Human Rights

Human rights issues were considered as part of the preparation of the CDP and, in particular, Article 8 which protects people's right to respect their private life, family life and home and Protocol 1, Article 1, which protects a person's

right to enjoy their property peacefully. As the SPDs sit below and reflect the policies and strategies of the CDP they similarly reflect its approach.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

Not applicable.

Procurement

Not applicable.

Appendix 2: Biodiversity Supplementary Planning Document

Please refer to the attached Biodiversity SPD.

Appendix 3: Biodiversity Supplementary Planning Document Statement of Consultation

Please refer to the attached Biodiversity SPD Statement of Consultation.

Appendix 4: Non-designated Heritage Asset Supplementary Planning Document

Please refer to the attached NDHA SPD.

Appendix 5: Non-designated Heritage Asset Supplementary Planning Document Statement of Consultation

Please refer to the attached NDHA SPD Statement of Consultation.