



## Report of the Head of Planning and City Regeneration

Special Planning Committee – 22 February 2021

### Adoption of Supplementary Planning Guidance: Development and Biodiversity

<b>Purpose:</b>	To inform Members of the representations received during the public consultation on the draft version of the SPG and highlight officer responses to these, and to seek approval to formally adopt the amended version as Supplementary Planning Guidance
<b>Policy Framework:</b>	Swansea Local Development Plan (Adopted 2019); Planning and Compulsory Purchase Act 2004; City & County of Swansea Local Development Plan (Adopted February 2019); Well-being of Future Generations (Wales) Act 2015; Planning (Wales) Act 2015; Planning Policy Wales (2018) and related Guidance; Environment (Wales) Act 2016.
<b>Consultation:</b>	Legal, Finance, Access to Services
<b>Recommendation(s):</b>	<p>It is recommended that:</p> <p>a) The issues raised in the representations made during the consultation process, and the responses of the Planning Authority to these (set out at Appendix A of this report), be noted;</p> <p>b) The final version of the SPG (attached at Appendix B of this report) be approved and adopted by the Council;</p> <p>c) The Head of Planning and City Regeneration, or appropriate delegated officer, be authorised to make any outstanding typographical, grammatical, presentational or factual amendments to the SPG prior to its final publication.</p>
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## 1.0 Introduction

- 1.1 In **July 2020** the Planning Committee resolved to approve a draft version of Supplementary Planning Guidance (SPG) relating to **Development and Biodiversity** for the purpose of public consultation. Subsequently, a comprehensive stakeholder engagement and public consultation process was undertaken to obtain views on the content of the draft document, and to identify whether modifications would be appropriate having regard to comments received.
- 1.2 Following the close of the consultation exercise in October 2020, the draft SPG document has been amended, which has improved the accuracy and clarity of the Guidance. The final version has now been produced for Members to formally endorse as SPG to supplement the Swansea Local Development Plan (LDP), and to be used in planning decision making.
- 1.3 This Committee Report briefly summarises the background and context to the SPG's preparation. It describes the outcome of the consultation process, and summarises the range of comments received, and the response of the Planning Authority to these comments. It also highlights the specific amendments that have been made to the draft version to further clarify and refine the SPG.
- 1.4 Appended to this Committee Report (Appendix A) is a copy of the Public Consultation Report, which has been produced to set out in full the range of comments received and assessed.
- 1.5 The final amended version of the Biodiversity and Development SPG is attached to this Committee Report at Appendix B.

## 2.0 Background and Context

- 2.1 Full details of the planning policy and legislative background and context to the SPG are provided in the July Committee report. The key points are summarised below.
- 2.2 The Swansea LDP (available at [www.swansea.gov.uk/ldp](http://www.swansea.gov.uk/ldp)) was adopted in February 2019 as the Council's statutory development plan. The LDP highlights a wide range of SPG scheduled to be produced to augment LDP policies, which will provide definitions and working examples to assist the interpretation of policy. One of the SPGs identified in the LDP as a priority to be produced in the early years of LDP adoption is '**Development and Biodiversity**', hereafter referred to in this Committee Report as 'the SPG'.
- 2.3 The SPG is primarily supplemental to the following policies in the adopted Swansea LDP:
  - ER 6 Designated Sites of Ecological Importance:** regarding the effects of development upon sites of international, national and local nature conservation interest.
  - ER 8 Habitats and Species,** regarding the effects of development on the resilience of protected habitats and species.
  - ER 9 Ecological Networks and Features of Importance for Biodiversity,** regarding the effects of development on the connectivity of ecological networks and features of importance for biodiversity.

2.4 The SPG also provides supporting guidance to the following adopted policies:

ER 1: Climate Change	ER 3: Strategic Green Infrastructure Network
ER 4 Gower AONB	ER 7 Undeveloped Coast
PS 1: Sustainable Places	PS 2: Placemaking and Place Management
SI 1 Health and Well Being	SI 5 Protection of Open Space

2.5 The SPG provides applicants with the detail necessary to understand how the Council will implement the LDP's biodiversity policies in alignment with recent changes to legislation and policy requirements<sup>1</sup> which together require the Council to achieve clearly defined well-being and environmental goals and objectives.

2.6 Maintaining and enhancing biodiversity is an integral part of the '**placemaking approach**', which underpins the Swansea LDP and Planning Policy Wales (PPW). The SPG assists in implementing this approach by providing guidance on the retention and enhancement of existing natural features and assets, and the integration of new features into the design and layout of a development.

### **3.0 Public Consultation and Engagement**

3.1 A public consultation and engagement process was undertaken on the draft version of the SPG for a minimum of 6 weeks, which began on the 4<sup>th</sup> September and ran until the 26<sup>th</sup> October.

3.2 Face to face public engagement events were unable to occur due to constraints on social contact associated with Covid-19 restrictions. Nevertheless, the consultation involved a wide range of awareness raising and engagement activities, including:

- Print media articles and social media notices before and during the consultation
- A specific web page created for the SPG that described the consultation, provided a weblink to the document, and a link to the comment form.
- Notification emails posted to a range of stakeholders, including Councillors
- Remote briefings to stakeholder groups via Microsoft Teams presentations.
- Publication of recorded video presentations on the Council's website.

3.3 The responses to the consultation have been recorded and evaluated. The key issues raised are set out below.

### **4.0 Key Issues Arising from the Consultation**

4.1 The public consultation generated a range of representations relating to all parts of the document, from individuals and organisations, representing both environmental and development industry sectors.

4.2 The Consultation Report (enclosed as Appendix A of this Committee Report) contains summaries of the comments received, categorised into issues/themes, together with the Council's corresponding response. Any necessary amendments to the draft SPG document are also reported. The full text of all consultation responses are annexed to the Consultation Report for transparency.

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<sup>1</sup> National Planning Guidance [PPW and Technical Advice Note (TAN) 12 'Design'], the Planning Act Wales 2015, the Environment Act (Wales) 2016, and the Well-being of Future Generations (Wales) Act 2015,

- 4.3 The main issues raised are set out below grouped under sub-headings that relate to sections of the SPG and the specific questions asked in the consultation survey.
- 4.4 **General comments:** The SPG document is substantial in length and technical in nature. Suggestion that this, together with the timing of the consultation during the pandemic, will have reduced the number and quality of responses received.
- 4.5 **Chapter 1: Introduction:**
- Support for the implementation of the stepwise approach and clarification that the s6 Duty applies to all biodiversity and not just important features.
  - Key Concepts are well explained, but “sustainable management of natural resources, net benefit and Enhancement” should be introduced upfront in chapter 1.
  - Request that fungi are given a much higher profile in the documents to recognise their important role in ecosystem resilience.
  - The use of the term “significant loss” at para 1.5 in relation *ensuring that development does not cause any significant loss of habitats or species*” does not reflect the wording and intention of the Environment (Wales) Act 2016.
  - Provide examples of actions Swansea have taken to deal with issues raised. E.g. how the Council have dealt with Invasive Non-Native species.
- 4.6 **Chapter 3: The stepwise approach**
- Development on a designated SINC should not be accepted unless it is made clear at the earliest stages of the planning process how the development will seek to enhance and/or restore the ecological contribution of that site to the ecological network. This requires a strict application of the stepwise approach and should be applied proportionately to all developments with the potential for ecological impacts regardless of scale.
  - Query whether there is sufficient capacity/resource within the council to support implementation of steps G & H re monitoring and management
- 4.7 **Chapter 4: The Development Management Process**
- Integration of the Stepwise Approach into council’s decision making process on planning applications**
- Support and encouragement for this approach and the commitment to implement key principles expressed throughout the chapter.
  - Linking of Stepwise to the stage of the DM process welcomed
  - Support for the clear link between biodiversity and ecosystem resilience in the planning process and the refusal to accept compensation for irreplaceable habitats.
  - Support the recommendation in para 4.23 that all ecological data collected as part of the planning process should be shared with the Local Biological Record Centre (SEWBReC)
  - Support - the principle expressed at 4.26 re the need to consider biodiversity impacts beyond site boundaries, and the importance of understanding the - larger impacts of relatively small developments.
  - Support - The principle expressed at 4.31 for re minimising fragmentation of ecological connectivity and any avoidable harm or net loss of important habitats or species.

- Support re iteration of s6 duty throughout the document, particularly the requirement for the DAS to set out how the stepwise approach has been followed
- Reference to emerging reference to British standard 8683 is which relates to a number of concepts which relate solely to the English planning system.
- Caution required when using terms such as 'net benefit' which may have several different interpretations and definitions.
- Refer to value of poor or degraded habitats and 'brown field' sites
- Concern that paras 4.42 and 4.49, re the relationship between the SAB and planning applications processes will add to confusion surrounding SAB.

**Appropriateness and viability of the approach early consideration of biodiversity issues to inform integration/retention and enhancement of developments.**

- Support for encouraging early consideration of key biodiversity issues
- Introduction of requirements for upfront ecological information and validation, engagement of specialists, pre-app engagement with council ecologists and consultation with NRW will impact on viability, affordability and elongate the planning process, particularly for SME's who are unable to cover upfront costs, due to development funding not being available until PP granted.
- Objections/concerns that the SPG will exacerbate problems of reduced densities and financial viability of development, when combined with other matters such as WG's planning fee raise and consultation on space standards for new homes
- SPG effects on viability will impact the amount of s.106 obligations that the Council can expect in areas like education and affordable housing particularly on sites that involve brownfield regeneration.
- The SPG should set out the mechanism for the calculation of commuted sums for maintenance and management
- The SPG should set out a transparent method of calculation of a monitoring fee
- Review Chapter 4 to highlight role of Fungi.

**Taking account of, and promoting the resilience of ecosystems**

- Include the means of enforcement of the stepwise process.

**Securing enhancements for net benefit for biodiversity wherever possible, proportionate to the scale, nature and location of the development involved**

- General support for the approach
- The wording "*Wherever possible*" is a vague commitment. The SPG should insist on biodiversity enhancements in all cases and then make a judgement on proportionality.

**Environmental information required to support a planning application**

- Detail provided in Appendix 2 re major developments should be clarified in the main document.
- Include reference to surveys requirements for Fungi

**4.8 Chapter 6: Appendices**

- Update incorrect references to River Tywi SAC and the River Usk SAC which do not fall within the Swansea / City & County of Swansea Local Authority area.

- The Council should publish a biodiversity connectivity map laying out clearly where crucial wildlife corridors are presently and where it proposes to create others.
- Add reference to “fish and aquatic invertebrates” in Appendix 1 to highlight necessary surveys for proposals affecting water bodies.

## 5.0 The Amended Final Version of the SPG

- 5.1 A full schedule of the responses of the Planning Authority to all the duly made consultation representations is included within the Consultation Report, which is published separately and also attached to this Committee report at Appendix A.
- 5.2 **Comments not requiring amendments:** A large number of the comments made did not necessitate an amendment to the draft document as it was considered the LDP and/or SPG already sufficiently covered the points raised. Some comments made in support of the SPG did not require a response other than to note and welcome the representation made. Some suggestions put forward conflicted with the adopted LDP or national guidance, or requested repetition of national guidance, neither of which are appropriate. A number of comments were queries that required an answer (which has been provided in the consultation report), but did not require a change to the SPG.
- 5.3 A comment was received on the length and technical nature of the document. Whilst no change is proposed to the document itself, it is proposed to produce an online “SPG on a page” style leaflet to communicate the key messages.
- 5.3 **Comments on viability:** Comments were received which highlighted concerns about the potential impact of the SPG on development viability and subsequent affordability of housing. The Council’s response is set out below and draws attention to the fact that the SPG does not itself introduce new requirements. Rather, the SPG provides guidance on how the Council will implement requirements already set out in national legislation & guidance and in the Council’s Adopted LDP.
- 5.4 **Comments requiring factual updates:** A number of comments did highlight the need for the draft SPG to be amended in order to: provide factual updates; additional cross references to relevant existing information; and improve the grammatical structure of the document. Specific changes have been made in order to provide more clarity in respect of:
- Amendment of references throughout the SPG and Appendices to reflect post Brexit amendments to UK environmental legislation.
  - Amendment of incorrect reference to “net gain” (a term more relevant to English planning process)
  - Proposed addition of visual examples of where Swansea has successfully secured environmental enhancements.
  - Amendment to reflect the important ecosystem services provided by fungi, and accurately reflect their definition as distinct “kingdom” alongside plants, animals and micro-organisms. (paras 1.14/1.15)
  - Clarification of wording throughout Chapter 3 to emphasise more clearly the key messages which underpin national legislation and guidance.
  - Various additions of key terms to the glossary.
  - Addition of a list of acronyms to the glossary.
  - Factual amendments to the Appendices and addition of reference to fish and aquatic invertebrates.

5.5 **Comments requiring substantive amendments:** Amendments made to the draft SPG, which are now incorporated in the final version, [Appendix B] include:

- Review of key terms and principles (namely “net benefit” “significant loss”, “no net loss” and “maintaining and enhancing biodiversity and ecosystem resilience) to ensure clear and accurate expression, consistent with the intention of national guidance and policy. These amendments will also ensure that the SPG remains robust in light of anticipated WG publication of the LDF and resulting revisions to PPW later this year. **See amendments to paras 1.6; 2.8; 3.13; 3.14; 3.18; 3.24, 4.31.**
- Minor amends made throughout the document consistently refer to “*net benefit for biodiversity*”. See amendments to paras 2.27, 2.31, 3.7, 3.23, 3.29, 4.9, 4.34, 4.53.
- Paras 1.1 and 1.3 - clarification of the significance of the Environment Wales Act 2016
- Paras 1.17 to 1.19 - clarification of principles of SMNR and net benefit and enhancement.
- Chapter 3 – General minor amends to improve clarity of expression of principles of the step wise process (3.5; 3.6; 3.11 3.16; 3.18; 3.19; 3.24; 3.34-3.36)
- Figure 3.1 and para 3.27 - clarification of the significance of principle of enhancement.
- Chapter 4 para 4.9 bullet 3 – Clarify reference to application requirements and PEA.
- Paras 4.9 (final bullet), 4.42 and 4.49 - Clarify references to the parallel SuDS approval process at
- Para 4.48 - Remove reference to un-adopted British Standard re Biodiversity Net Gain

5.6 The effectiveness and appropriateness of this SPG will be regularly monitored by the LPA having regard to the outcomes that arise. This monitoring will consider any additional evidence arising over time, such as new national guidance and future outcomes of planning decisions that reference the SPG (including planning appeals). This will be particularly important where such outcomes demonstrate that a particular change to the guidance is necessary for the LPA to continue to use the SPG to provide effective, evidenced based and sustainable decision making.

## 6.0 Financial Implications

6.1 There are no significant financial implications arising from the publication of this SPG. The cost of the public consultation process and document production has been accommodated within existing budgets and staff resources, and has utilised, as far as possible, electronic communication (email and website). The final adopted document will be made available electronically and hard copies will generally only be produced upon request for an appropriate charge in order to recoup costs incurred. As such printing costs going forward will not be significant and can be met within allocated budgets.

## 7.0 Legal Implications

7.1 The SPG will provide planning guidance to the adopted Swansea LDP and will be a material consideration in evaluating future planning applications.

7.2 The Council has a duty to seek to continually improve in the exercise of its functions (which include where appropriate powers) in terms of strategic effectiveness, service quality and availability, sustainability, efficiency and innovation pursuant to the Local Government (Wales) Measure 2009.

## **8.0 Equality & Engagement Implications**

8.1 The Council is subject to the Public Sector Equality Duty (Wales) and must, in the exercise of their functions, 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.

Our Equality Impact Assessment process ensures that we have paid due regard to the above

8.2 An Equality Impact Assessment (EIA) screening was carried out and this demonstrated that a full EIA was not necessary. The results of the screening are set out in Appendix C of this Committee Report.

### **Background Papers:**

Report of the Head of Planning and City Regeneration to Special Planning Committee July 2020 re [New Supplementary Planning Guidance: Development and Biodiversity and Trees, Woodlands & Hedgerows \(Consultation Drafts\)](#).

### **Appendices:**

Appendix A: Public Consultation Report

Appendix B: Development and Biodiversity SPG

Appendix C: Equality Impact Assessment (EIA) Screening Form