

Report of: Executive Member for Housing and Development

Meeting of:	Date	Ward(s)
Executive	16 July 2015	All

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SUBJECT: Adoption of the Preventing Wasted Housing Supply Supplementary Planning Document

1. Synopsis

- 1.1 The purpose of this report is to inform members of the results of the consultation on the draft Preventing Wasted Housing Supply Supplementary Planning Document (SPD), and to ask the Executive to adopt the final SPD.
- 1.2 The Council issued a discussion paper and questionnaire entitled 'Preventing Wasted Housing Supply', in March 2014. The purpose of this paper was to set out potential measures that the Council could take through the planning system to ensure that new homes built in Islington are available for people to occupy, either through ownership or rent, rather than be bought by investors and left empty, a practice commonly referred to as 'buy-to-leave'.
- 1.3 The discussion paper was prompted by the growing concern that buy-to-leave is occurring in Islington, particularly with apartments in high-density apartment blocks. This means that a proportion of new housing is not contributing to meeting housing need.
- 1.4 The Council produced a draft SPD with firm proposals to ensure that the supply of new housing in Islington is not wasted by buy-to-leave purchasers. The approach in the first draft SPD was informed by the consultation responses to the discussion paper and evidence on viability / financial considerations. Public consultation on the first draft SPD took place from 8 December 2014 to 30 January 2015.
- 1.5 A revised draft SPD was then produced, informed by the responses to the previous consultation, and consultation on this was undertaken from 15 May to 15 June 2015. Both of these consultations were conducted in accordance with the approach indicated in the Statement of Community Involvement. The response to the latest consultation has informed the final version of the SPD to be taken forward for

adoption by the Executive (attached at Appendix 1). Minor revisions have been made to the consultation draft. A full analysis of the responses to all three rounds of public consultation is provided in the Consultation Statement (attached at Appendix 2).

- 1.6 Once adopted, the SPD will be a material consideration in determining any future planning applications to which it applies.

2. Recommendations

- 2.1 To note the results of the public consultations that took place on the draft Preventing Wasted Housing Supply SPD from 8 December 2014 to 30 January 2015 and from 15 May to 15 June 2015 (both of which are summarised in the Consultation Statement attached at Appendix 2).
- 2.2 To adopt the final Preventing Wasted Housing Supply Supplementary Planning Document, attached at Appendix 1.

3. Background

- 3.1 Local Plans must be consistent with the National Planning Policy Framework (NPPF). Specifically, paragraph 47 states that to *“boost significantly the supply of housing, local planning authorities should [...] ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area....”*
- 3.2 The Development Plan in Islington is comprised of the Core Strategy (2011), Development Management Policies (2013), Site Allocations (2013), Finsbury Local Plan (2013) and the London Plan (latest alterations adopted March 2015). Supplementary Planning Documents provide further detail on the implementation of policies in the Development Plan documents and are a material consideration in determining relevant planning applications.
- 3.3 In London, the Mayor’s London Plan sets out the overall housing target for London and how much housing individual boroughs are required to deliver (further details in paras 3.12 and 3.13 below). The Council has and will continue to have challenging targets. This places significant pressure on the Council to accept and deliver a high volume of housing. Although the housing developments to which the SPD will be applied will count towards the borough’s targets for housing delivery, if they are left empty they will not help to fulfil the need behind the targets. Despite being the most densely populated local authority area in the country, Islington has an exceptional housing delivery record, with total completions at 158% of the housing target over the period 2008/09 to 2013/14. Islington continues to be an area with exceptionally high housing demand. The borough also has a robust five-year supply which projects further strong, above-target delivery that demonstrates Islington will continue to make a disproportionately high contribution towards meeting housing need in London in the future. This means that it is vital that none of this new supply is wasted.
- 3.4 In recent years across London, residents and policymakers have been concerned that a significant proportion of new residential development is purchased off-plan by speculative investors. Some of these dwellings are then neither occupied by their owners, nor are they made available in the private rented sector. The motivation of some of these owners could be to take advantage of rising capital values in order to sell on the property after a period of time. Therefore the dwellings do not, in practice, help Islington to meet its objectively assessed need for housing as required by the NPPF.

The SPD sets out evidence that the Council has gathered to estimate rates of vacancy in some recent developments across the borough. The SPD also draws upon independent research which examines patterns of investment in housing across London and provides wider context.

- 3.5 A discussion paper and questionnaire on this topic was released for public consultation between 24 March and 14 April 2014.

- 3.6 The discussion paper attracted a significant response from members of the public, and gained attention from the national media and trade press. In total there were 74 responses, of which 78% were in favour of the principle of the proposals. A full analysis of the consultation responses is provided in the Consultation Statement (attached at Appendix 2).
- 3.7 The discussion paper presented the option that the Council could seek a financial contribution from buy-to-leave purchasers, to be used towards providing replacement housing off-site. This option received strong support from residents who responded to the consultation. However, following exploration of all the issues raised during the initial consultation, it is considered that it would not be the most effective mechanism to ensure that new housing is not wasted, and this option has not been taken forward in the draft SPD.

Purpose of the SPD

- 3.8 The purpose of the SPD is to prevent wasted housing supply. The mechanism for achieving this is to impose a planning obligation on developers and purchasers through a section 106 planning agreement binding on the owner(s) of the dwellings which requires new dwellings to be occupied. This will be applied to all developments that result in 20 or more new dwellings.
- 3.9 The section 106 agreement will oblige the dwelling owner to ensure that the dwelling is used and occupied as a dwelling house and this obligation will include ensuring that it is not left vacant for longer than three consecutive months. The occupancy criteria have been carefully formulated in order not to prevent occupation of a property as a second home.

The section 106 will also impose a requirement on developers to inform purchasers of this obligation. The Council will have the right to investigate suspected breaches of this requirement and to require that owners provide evidence of compliance. The Council will seek to establish whether the dwelling is occupied in line with the criteria set out in the SPD. Where a breach is established, the Council may take enforcement action, including where appropriate applying to the courts for an injunction and/or an order requiring specific action.

Local Plan objectives

- 3.10 Islington's Core Strategy sets out the Council's strategic vision for the borough up to 2025. This includes the approach to important issues such as delivering housing and affordable housing. The 19 objectives include:
- Tackling inequality and exclusion in the borough, and seeking to ensure that local residents share in the prosperity of London.
 - Securing a supply of housing which encourages mixed communities, where the main priority will be maximising provision of social rented housing. Mixed communities include (but are not limited to) different tenures, household sizes and ages (including families, older people and disabled people).
 - Meeting and seeking to exceed the minimum regional targets for housing supply, with new housing contributing to the increased quality of life for residents.

- 3.11 Core Strategy policy CS12, part B includes the provision that "proposed developments which result in the reduction of land supply for conventional housing will be refused." It is considered that the SPD will assist the delivery of this policy objective by ensuring that new housing, once delivered, is not removed from supply.

Housing Need and Delivery

- 3.12 Islington is a very small borough, with no vacant sites to speak of, and a borough which continues to face intense development pressures from different competing land uses. This emphasises the need to protect scarce land for key priority uses such as housing, and also the need to ensure that supply that does come forward is not wasted.
- 3.13 It is worth noting that through the adopted Further Alterations to the London Plan (FALP, March 2015)

the Mayor of London has revised the overall London housing targets upwards, based on up-to-date evidence. The Mayor undertook a Strategic Housing Market Assessment (SHMA, Oct 2013), which found that London will require at least 49,000 and possibly as many as 62,000 more homes per year. The previous target figure for London as a whole (as per the 2011 London Plan) was only 32,000 per year; very significantly below what the up-to-date evidence suggests is needed. In collaboration with the London boroughs, the Mayor has also assessed housing land capacity across London through a Strategic Housing Land Availability Assessment (SHLAA, 2013). The housing capacity identified in the SHLAA came to a total of 42,000 units across London as a whole, leaving a significant gap between the capacity figure and the need figure of 49,000. The Mayor's SHLAA identified the capacity in Islington to deliver 1,264 units per year. This is slightly higher than the previous target of 1,170 from the 2011 London Plan.

- 3.14 In order to address the gap between the identified capacity and the overall need/requirement in London, the London Plan as revised by the FALP (March 2015) includes the figure of 42,000 for London (and within that an annual figure of 1,264 for Islington) as a benchmark, or effectively a starting point, for developing the borough housing targets. The revised London Plan policy directs the boroughs to "draw on" the housing benchmarks in the FALP, and that these should be "augmented where possible with extra housing capacity to close the gap between identified housing need and supply in line with the requirements of the NPPF". Just meeting the borough "benchmark" figure included in the London Plan will not be enough to comply with the London Plan and the national planning policy. Rather, each borough will need to undertake their own assessment of housing need through their local Strategic Housing Market Assessment (SHMA (Islington is currently in the process of preparing such a study) and seek to identify additional sources of housing capacity in order to make effective contribution towards the overall minimum need figure of 49,000 per annum.
- 3.15 Given all the above, it is clear that the Council will need to maximise its housing delivery and ensure that no future housing supply is lost. In the future each London borough will need to demonstrate that they have maximised their contribution towards meeting London's acute housing need and towards closing the gap between the identified 42,000 capacity figure and the minimum need figure of 49,000 discussed above. It is therefore crucial that no housing supply that could contribute to meeting this need is wasted.
- 3.16 Members should be aware that even without the SPD, the dwellings delivered will technically contribute to the borough meeting its housing targets as set out in the London Plan (2015). However these targets are not a goal of their own, but a means to achieve the objective of meeting housing need, which is acute in Islington and across London. The SPD will help to ensure that no new supply is wasted and that housing delivery serves the purpose of meeting housing need.

SPD adoption

- 3.17 The draft SPD has been revised to take account of relevant planning issues raised during various rounds of public consultation. The Executive is asked to consider the comments received during public consultation and adopt the updated SPD.
- 3.18 The SPD measures will begin to be applied to all development schemes of 20 dwellings or over that are received after the adoption of the SPD on 16 July 2015.

4. Implications

Financial implications

- 4.1 The cost of producing the SPD and consultation costs will be met through existing budgets within the Planning and Development division.

Legal Implications

- 4.2 In preparing the SPD (which is a local development document) the Council are required to take into account the matters set out at section 19(2) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") and the additional matters set out at regulation 10(1) of the Town and Country Planning (Local Planning) (England) Regulations 2012 ("the 2012 Regulations").

- 4.3 Any policies in a SPD must not conflict with the adopted development plan (regulation 8(3) of the 2012 Regulations). The Preventing Wasted Housing Supply Draft SPD has been prepared in accordance with the requirements of the 2004 Act and the 2012 Regulations. In preparing the SPD account should be taken of the advice given in the NPPF, and in particular that given in paragraph 153, that SPDs should be used where they can help applicants make successful applications or aid infrastructure delivery and should not be used to add unnecessarily to financial burdens on development. Account should also be taken of the advice given in the National Planning Practice Guidance, including the advice that SPDs should build upon and provide more detailed advice or guidance on the policies in the Local Plan.
- 4.4 The SPD builds upon and provides more detailed advice to secure the policy objectives set out at Policy CS12 in the Council's Core Strategy, and at paragraph 47 of the NPPF.
- 4.5 The Preventing Wasted Housing Supply SPD was subject to consultation in accordance with the 2012 Regulations. The results of that consultation and a statement setting out how the issues raised by consultees have been addressed, is set out in Appendix 2 to this report. Following consultation and adoption, the SPD will be a material planning consideration in the determination of future planning applications.
- 4.6 Additional legal implications are included in other parts of this report.

Environmental Implications

- 4.7 New development within the borough already requires detailed planning consent and so will have to comply with all policy requirements on sustainability, including, where appropriate submission of a Sustainable Design and Construction Statement, which will include an Energy Assessment.
- 4.8 A Screening Statement to determine the need for a Strategic Environmental Assessment (SEA) for this SPD has been prepared. The screening has concluded that an SEA does not need to be prepared as the SPD does not introduce new policies, but provides guidance on already adopted Local Plan policies that relate to new housing delivery. These policies have been sufficiently appraised in the Sustainability Appraisals of the Local Plan documents adopted by Islington. It is considered that the Preventing Wasted Housing Supply SPD will not result in any additional significant effects to those already identified through the higher level Sustainability Appraisals. The SPD will provide more detailed guidance to ensure that the potential positive effects identified within the Sustainability Appraisals for Islington's Local Plan documents are realised.

Resident Impact Assessment

- 4.9 The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.
- 4.10 The assessment of impacts on equalities is an iterative process and has been considered throughout the development of the SPD, including relevant contextual data where this has been available, for example Census data. The Resident Impact Assessment (RIA) has been revisited at different stages of production to assess changes to the document. The first draft SPD was fully assessed for equalities impacts in November 2014 via an initial RIA. The second draft SPD was assessed in May 2015 via another draft RIA, which has now been finalised following the closure of consultation.
- 4.11 The RIA process has not identified any negative equality impacts for any protected characteristic or any human rights or safeguarding risks. The SPD is intended to help prevent waste of the supply of housing so that new residential development meets identified housing need. Once implemented, rather than having any negative equality impacts, it is therefore likely to be of benefit to existing residents and persons seeking to live in Islington, although no specific advantages are anticipated for any protected characteristic.

- 4.12 As part of the RIA process, officers have considered potential interference with rights protected by the Human Rights Act 1998, including the right to property (Protocol 1, Article 1 to the European Convention on Human Rights). It was found that there was no unjustified interference with human rights.
- 4.13 The European Convention on Human Rights has been transposed into UK legislation in the Human Rights Act 1998. Article 1 of Protocol 1 to the convention protects the rights of every person to peaceful enjoyment of their possessions. It provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”

- 4.14 The European Court of Human Rights has recognised in the context of Article 1 of Protocol 1 that regard must be had to the fair balance which has to be struck between the competing interests of the individual and of the community as a whole.
- 4.15 Interference with property rights which would arise as a result of the measures set out in the SPD have been considered, and officers have formed the view that such interference with rights, including the control that would be imposed on the use of property, is in the general interest and that a fair balance has been struck. In particular, it is the view of officers that the control imposed is limited, in that it requires housing to be used for the purpose for which it is built whether through owner occupation or by letting, and that the benefit to the public or general interest is great, in that the policy will ensure that housing is used to meet housing needs. Executive are invited to endorse that view by accepting the recommendations set out in this report. The planning system as a whole interferes with property rights but does not contravene Article 1 of Protocol 1. Officers consider that such control on the use of property as will be imposed by the SPD is consistent with the planning system, is in the general interest, and is fully justified and proportionate in order to secure the legitimate aim of ensuring that full and effective use is made of housing in Islington and that housing that is built serves the purpose of meeting housing need.

5. Conclusion and reasons for recommendations

- 5.1 Once adopted, the SPD will be a material consideration in determining planning applications that would result in 20 or more dwellings, across the borough. The public consultation process has enabled local people and other interested parties to engage with and feedback on the draft SPD from an early stage and throughout its production.
- 5.2 The draft SPD has been reviewed and, where necessary, amendments have been made in the light of relevant planning concerns raised during each stage of public consultation. Adoption of the SPD by the Council will provide greater certainty to both the local community and interested parties about the nature of housing development that is likely to be acceptable to the Council as a local planning authority.

Appendices

Appendix 1 – Preventing Wasted Housing Supply SPD

Appendix 2 – Preventing Wasted Housing Supply SPD Consultation Statement

Final report clearance:

Signed by:

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Executive Member for Housing and Development Date

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