

## CABINET

23 November 2010

### JOINT REPORT OF THE CABINET MEMBER FOR ENVIRONMENT AND THE CABINET MEMBER FOR REGENERATION

<b>Title:</b> Local Development Framework - Draft Biodiversity Supplementary Planning Document and Draft Trees and Development Supplementary Planning Document	<b>For Decision</b>
<b>Summary:</b>  The Draft Biodiversity Supplementary Planning Document (SPD) (attached as <b>Appendix 1</b> ) sets out the Council's guidance on protecting and enhancing biodiversity in the borough through the planning process. It explains how new development can be designed to benefit wildlife. The Draft Trees and Development Draft Planning Document (SPD) (attached as <b>Appendix 2</b> ) provides guidance on how trees are protected in the borough and how this impacts on development proposals.  Both SPDs provide guidance to developers on complying with planning policy in the Local Development Framework (LDF) including adopted Core Strategy policy CR2 Preserving and Enhancing the Natural Environment and emerging Borough Wide Development policy BR3 Greening the Urban Environment. They also provide guidance on the relevant legislation developers must follow in this area.  <b>Wards Affected:</b> None	
<b>Recommendation(s)</b>  The Cabinet is recommended to agree:  (i) the Draft Biodiversity Supplementary Planning Document for consultation and as a material consideration for Development Management in dealing with planning applications.  (ii) the Draft Trees and Development Supplementary Planning Document for consultation and as a material consideration for Development Management in dealing with planning applications.	
<b>Reason(s)</b>  To help deliver the Community Plan priorities: <ul style="list-style-type: none"><li>• Priority 2: A clean, green and sustainable borough</li></ul>	
<b>Comments of the Chief Financial Officer</b>  The two proposed Supplementary Planning Documents (SDP's) do not contain any new policies, but provide guidance on how to comply with existing legislation concerning the protection of wildlife and the implementation of LDF policy. Thus, they do not impose any	

new onerous requirements or financial consequences (or rewards) onto customers (internal customers, developers, and householders).

The service is currently in receipt of Government grant income of £16,836 in respect of Biodiversity / Habitats Regulations. The work associated with consulting on and implementing the two SDP's will be carried out by current staff, and met from within existing Regeneration & Economic Development budgets. There will be some minor incidental expenditure incurred, such as that of advertising, postage, and printing, and this will be (more than) offset by the Government grant income received.

### **Comments of the Legal Partner**

The Planning and Compulsory Purchase Act 2004 (the "Act") requires the Council to replace its Unitary Development Plan (UDP) with a Local Development Framework (LDF).

The Local Authorities (Functions and Responsibilities) (Amendment) (No 2) (England) Regulations 2004 provide that adoption of Local Development Documents are not a Cabinet function. Once consultation has been completed the necessary resolution to adopt the documents under Section 23 of the Act will need to be taken by the Assembly.

<b>Head of Service:</b> Jeremy Grint	<b>Title:</b> Divisional Director of Regeneration and Economic Development	<b>Contact Details:</b> Tel: 020 8227 2443 E-mail: jeremy.grint@lbbd.gov.uk
<b>Cabinet Member:</b> Councillor Vincent	<b>Portfolio:</b> Environment	<b>Contact Details:</b> Tel: 020 8724 2892 E-mail: (gerald.vincent@lbbd.gov.uk)
Councillor McCarthy	Regeneration	<b>Contact Details:</b> Tel: 020 8724 8013 E-mail: (mick.mccarthy@lbbd.gov.uk)

## **1. Background**

- 1.1 The 2004 Planning and Compulsory Purchase Act requires Barking and Dagenham to replace its Unitary Development Plan with a Local Development Framework (LDF). The LDF is a key corporate document which is focused on implementing the spatial dimensions of the Community Plan.
- 1.2 On 21 July 2010 the Council adopted the Core Strategy. The Core Strategy is the main LDF document which sets the vision for the future planning of the borough up to 2025. Core Strategy policy CR2 Preserving and Enhancing the Natural Environment states: "The Council will seek to preserve and enhance the borough's natural environment, including all sites of ecological or geological value (whether or not they have statutory protection) and all protected or priority species."
- 1.3 A further LDF document called the Borough Wide Development Policies Development Plan Document contains the development management policies for the borough and was reported to Members in 2009. This went through the process of independent examination in September 2010. Emerging policy BR3 in this

document establishes that the enhancement and protection of nature conservation should be a consideration of all development proposals.

## **2. Proposal**

- 2.1 This report covers another important part of the LDF, Supplementary Planning Documents which provide further guidance on the implementation of LDF policies.
- 2.2 The purpose of the Biodiversity SPD is to provide guidance to developers, householders and planners on how biodiversity should be protected and enhanced in the borough in accordance with policies in the Core Strategy and the Borough Wide Development Policies DPD (BWDPDPD). The document provides advice on:
  - The legislation protecting plants, animals, birds and their habitats namely the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2010 and the Badgers Act 1992.
  - The biodiversity information required when making a planning application, for example setting out when surveys of wildlife and habitats should be carried out.
  - How to integrate biodiversity into buildings and their surroundings so as to improve existing habitats and create new habitats. This can be achieved, for example, by including plants in landscaping schemes that are good for bees and birds or by providing nest boxes.
- 2.3 The document also provides information on the wildlife sites and species found in the borough which the guidance is focused on preserving or enhancing. The borough has a wide range of habitats, many of which are on protected sites providing access to nature for local people eg Eastbrookend Country Park was created on a restored landfill and quarry site and features a mosaic of water, scrub, woodland and grassland, providing ideal conditions for wildlife. The Ripple Nature Reserve is an example of a brown field site where plants and trees have re-colonised the land and where wildlife now flourishes. Waterways across the borough include the River Roding, the Mayes, the Beam and the Goresbrook, all of which make a significant contribution to the borough's biodiversity.
- 2.4 A Non-Technical Summary of the Draft Biodiversity Supplementary Planning Document has been prepared to assist with consultation and to assist with the delivery of the guidance.
- 2.5 The Draft Trees and Development SPD sets out the Council's policies on the protection of trees in the borough. These policies are based on the LDF, the London Plan and best practice as recommended by the Department for Environment, Food and Rural Affairs, and Communities and Local Government.
- 2.6 The purpose of the SPD is to guide developers and householders on legislation, planning requirements and the protection of trees.
- 2.7 Guidance is provided on:
  - Trees and the design of development
  - Surveys of land and trees that may be submitted with planning applications.
  - Protecting trees during construction on the development site.
  - Tree Preservation Orders (TPOs)

- Conservation Areas. (Trees in Conservation Areas receive a similar level of protection to trees protected by TPOs)
- Wildlife and trees.

2.8 Both SPDs are important tools in ensuring that the natural environment and the built environment are not pitted against each other but are regarded as being mutually interdependent. As set out in the recent Government discussion paper “An Invitation to Shape the Nature of England, A Discussion Paper (DEFRA, 2010)”, the natural environment underpins our economic prosperity, our food security, health and wellbeing and our ability to adapt to climate change.

### 3. Financial Issues

3.1 The costs of consulting on the draft SPDs and implementing the SPDs through the development management process will be met from the existing Regeneration and Economic Development budget. The Council also received a Government grant in 2010 and 2009 for new burdens associated with the Habitats Regulations, amounting to £16,836. This grant will also assist with the costs of consultation and implementation.

### 4. Legal Issues

4.1 The Local Development Framework regime was introduced by the Planning and Compulsory Purchase Act 2004. It replaces the Unitary Development Plan. The process is set out in secondary legislation namely the Town and Country Planning (Local Development) (England) Regulations 2004. The Regulations were amended in June 2008 by the Town and Country Planning (Local Development) (England) (amendment) Regulations 2008.

4.2 The proposed Supplementary Planning Documents are subject to defined consultation procedures requiring publishing on the Council’s website; advertising notice of the proposal and availability for inspection at the Council’s offices.

4.3 As part of the consultation procedure the draft SPDs should be sent to each of the specified consultation bodies to the extent that the local planning authority thinks that the SPDs affects the body and such that other bodies as the Council considers appropriate.

4.4 The consultation period must not be longer than six weeks or shorter than four weeks. If representations are received they must be considered prior to formal adoption.

### 5. Other Implications

#### Risk Management

Risk	Probability	Impact	Priority	Action
Failure to meet legal requirements.	Low	High	High	Relevant Act and Regulations will be followed in preparing and adopting SPD.

Policy not applied successfully	Low	High	High	Development Management staff will be fully briefed.
Failure to integrate fully with other Council policies and strategies	Low	High	High	The Draft SPD has been prepared in consultation with Natural England, the GLA, the London Biodiversity Partnership and relevant Council services.
Guidance is not upheld at appeal	Medium	High	High	This SPD is in line with Government guidance on protecting and enhancing biodiversity and protecting trees. Its purpose is to provide detailed guidance to developers on the implementation of LDF policy set out in the Borough Wide Development Policies DPD and the Core Strategy which has now been adopted.
Policy is challenged by developers.	Low	High	High	Other local authorities have issued similar guidance. The SPD does not impose any new requirements but instead provides guidance to developers on how to comply with legislation and LDF policy.

- **Customer Impact**

- The two SPDs do not contain new policies but they do provide helpful guidance on how to comply with legislation concerning the protection of wildlife as well as implementation of LDF policy.
- The consultation process will allow the general public, developers and statutory bodies to comment on these documents. Consultation will be undertaken in line with the Council's Statement of Community Involvement.
- The potential impacts on customers are identified below:

External Customers:

Developers

Both SPDs explain the requirement to protect biodiversity and trees during the development process and to identify mitigation measures where necessary. This should enable developers to incorporate the protection and enhancement of biodiversity and the protection of trees from the earliest stages of a new project. This will help ensure that the necessary information is provided with the planning application and that delays are avoided later in the planning process.

## Householders

The documents set out the responsibilities of householders with regard to permitted development and the protection of wildlife and to the protection of trees. These responsibilities are defined by legislation and therefore do not represent any additional burden on householders.

## Internal Customers:

These documents should help Development Management identify at an early stage in the planning process if

1. The necessary information has been provided
2. Measures to protect, enhance and create biodiversity and to protect trees are included in the application.

This will help Development Management staff ensure legal and policy requirements are met during the planning process.

- **Health Issues**

- Ultimately biodiversity sustains human life as we are all part of the same ecosystem which provides the resources for life to flourish. Biodiversity also contributes to our health and wellbeing whether this is due to the role of biodiversity in mitigating the impacts of climate change or the psychological benefits of biodiversity in the urban environment that recent studies have evidenced. The borough has a number of important habitats for sustaining biodiversity including 30 designated Sites of Importance for Nature Conservation, gardens, allotments, rivers and reed beds, and grassland. The borough is also home to a variety of protected species of plants and animals. The borough's biodiversity is enjoyed and accessed by many residents.

- **Crime and Disorder Issues**

- The two SPDs provide guidance on how to comply with legislation such as the Wildlife and Countryside Act 1981 and will help to address environmental crime in the borough.
- Trees often contribute to the sense of wellbeing of local areas. In siting trees, attention will be paid to the location of CCTV and the impact on line of site of trees once they mature and leaf.

- **Property / Asset Issues**

- Council proposals for the development of sites will also need to comply with LDF policy and as such will benefit from the guidance provided in the two SPDs.

## 6. Options appraisal

6.1 There are two options to consider:

1. Not prepare a Biodiversity SPD and a Trees and Development SPD. This would make the implementation of adopted Core Strategy policy CR2 and

emerging Borough Wide Development policy BR3 Greening the Urban Environment more difficult and may also result in unnecessary delays in the development management process.

2. Prepare a Biodiversity SPD and a Trees and Development SPD and undertake statutory and public consultation on these. This is the preferred option as it will help improve the protection of wildlife in the borough, increase access to the natural environment for local people, help mitigate against the impacts of climate change and provide guidance to prospective developers on how to comply with legislation and LDF policy.

## **7. Background Papers Used in the Preparation of the Report:**

Local Development Framework: Adoption of the Core Strategy Development Plan Document, 21 July 2010, Assembly Minute 14.

The submission Borough Wide Development Policies DPD

An Invitation to Shape the Nature of England, A Discussion Paper, DEFRA July 2010

## **8. List of appendices:**

**Appendix 1:** Draft Biodiversity Supplementary Planning Document.

**Appendix 2:** Draft Trees and Development Supplementary Planning Document.