



Policy and Resources Committee

19th July 2022

Title
The Burroughs and Middlesex University Supplementary Planning Document

Report of
Chair - Policy and Resources Committee

Wards
Hendon, West Hendon

Status
Public

Urgent
No

Key
Yes

Enclosures
Appendix A – Draft The Burroughs and Middlesex University Supplementary Planning Document

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Summary

The draft Burroughs and Middlesex University Supplementary Planning Document (SPD) explains the planning context and planning constraints for development in the area known as “the Burroughs” in Hendon and sets out design guidance and opportunities for change in that area. Having gone through the statutory preparation and consultation stages throughout 2021, the draft SPD was presented by officers to Policy & Resources Committee for adoption, subject to minor changes being made by the Chief Executive, on 20th July 2021.

Following the local government elections and the change in administration, the Council has, as part of its review of decisions taken by the previous administration, been reviewing the Policy and Resources Committee’s resolution on 20 July 2021 in respect of the Burroughs and Middlesex Supplementary Planning Document.

The draft SPD has not been publicised for adoption and therefore has not been formally adopted. The policy context in which the resolution on 20 July 2021 was taken has now moved on, as the emerging Local Plan is now advancing through public examination. In order to formally adopt the draft SPD, it is likely that more than minor changes to the draft SPD would be needed in order to account for the different policy context. These changes could not therefore be made in accordance with the resolution of 20 July 2021. Officers therefore recommend resolving not to proceed to adopt the draft SPD and withdrawing the draft SPD in its current form.

Officers Recommendations

That the Policy and Resources Committee:

- 1. Resolve not to pursue the formal adoption of the draft The Burroughs and Middlesex University Supplementary Planning Document (SPD), and to withdraw the current version (at Appendix A).**

1. WHY THIS REPORT IS NEEDED

- 1.1** The draft SPD provides environmental, social, design and economic objectives for development in this particular part of Hendon, known locally as “the Burroughs”. It relates to the current ambitions for enhancing this particular part of Hendon, which is known for its civic, community and educational institutions, embedded in a rich heritage fabric and established alongside residential neighbourhoods. The Burroughs is home to Hendon Town Hall, Hendon Library and the campus of Middlesex University.
- 1.2** The draft SPD was produced in the context of the existing development plan together with Barnet’s emerging Local Plan. The Draft Barnet Local Plan Schedule of Proposals identifies nine sites which are covered in the draft SPD area for redevelopment. This draft SPD provides more detail of the environmental, social, design and economic objectives for these sites.
- 1.3** Formal public consultation on the draft SPD was undertaken for six weeks from 11 January to 22 February 2021. There has been considerable opposition from local residents to redevelopment opportunities in the Burroughs, in particular the development opportunities and sites identified in the draft Local Plan and referenced in the draft SPD.
- 1.4** Having undertaken the preparation and formal consultation stages during 2020/2021, the draft SPD was presented by officers to Policy & Resources Committee for adoption on 20th July 2021, subject to minor changes being made by the Chief Executive. The decision by the Committee has since been legally challenged by a Hendon resident, who has brought judicial review proceedings alleging that the draft SPD is unlawful. A final hearing date has

not yet been listed for those judicial review proceedings but is likely to be sometime in November 2022.

- 1.5 Following the local government elections in May 2022 and the change in administration, the Council decided to review decisions taken by the previous administration. As part of this review, the Council has been reviewing the Policy and Resources Committee's resolution on 20 July 2021 in respect of the draft SPD.
- 1.6 No minor amendments have yet been made to the draft SPD, and it has not been publicised for adoption. It has not therefore been legally adopted. The emerging Local Plan is now advancing through to public examination. Officers recommend resolving not to pursue the formal adoption of the draft SPD and withdrawing the draft SPD in its current form.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The draft SPD was produced in a policy context that has now progressed. Barnet's draft new local plan is now at a more advanced stage. A provisional date in late-2022 has been given by PINS for the examination hearings in public of the emerging local plan.
- 2.2 The un-adopted draft SPD has also been the subject of judicial review proceedings. The claim does not yet have a substantive hearing date, but it is not likely to be heard until at least November 2022. The Council has not proceeded to adopt the draft SPD during the judicial review proceedings. By the time the claim is finally determined, the policy context of the emerging draft local plan will have moved on again. It is quite possible at that stage that amendments to the SPD, in order to ensure its consistency with Barnet's draft local plan, will be needed before it can be adopted. If such changes are more than minor they could not be made by the Chief Executive, in accordance with the resolution dated 20 July 2021. Such changes would also require the Council to go through the process of public consultation on the draft SPD afresh and return it to committee.
- 2.3 In those circumstances, there is limited practical use for leaving the draft SPD in abeyance until the draft local plan proceedings are concluded. The Committee should resolve not to proceed with adoption of the draft SPD, and to withdraw it in its current form.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The alternative would be to formally adopt the draft SPD in advance of adoption of the emerging Local Plan. As identified above, there would be limited practical use to doing so, as the draft SPD could now quickly become out of date. Additionally, if the SPD were adopted and then held to be unlawful by the High Court, there would be a risk that any future planning decisions which placed weight on the SPD would similarly be open to

challenge. This would unnecessarily frustrate any further opportunities for redevelopment of this area of Hendon.

4. POST DECISION IMPLEMENTATION

4.1 The current version of the draft SPD will be withdrawn. It will become subject to review following the adoption of the draft Local Plan.

5. IMPLICATIONS OF DECISION

5.1 Performance

5.2 The Council has, as part of its review of decisions taken by the previous administration, been reviewing the Policy and Resources Committee's resolution on 20 July 2021 in respect of the Burroughs and Middlesex Supplementary Planning Document.

5.3 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.3.1 The cost of preparing this SPD has been at no additional cost to the Council.

5.4 Social Value

5.4.1 The Council to secure development that provides a range of social, economic and environmental benefits in compliance with adopted and emerging planning policies.

5.5 Legal and Constitutional References

5.5.1 The draft SPD must be adopted by a resolution of the Council as the LPA for its administrative area (s.17(8)(a) and s28(3), PCPA 2004). Upon adoption the draft SPD will be a material consideration in the determination of relevant planning applications within the area defined in the draft SPD. SPDs provide further detailed guidance on topics in development plan policies and may not allocate land uses or create new planning policies. The SPD is a supplementary document, it therefore does not form part of the Council's statutory development plan. However it will be a "local development document" (s.17(7)(za), PCPA 2004 and reg. 5, 2012 Regulations).

5.5.2 All SPDs must be prepared in accordance with the Council's Local Development Scheme (s.19(1), PCPA 2004) and the Statement of Community Involvement (SCI) (s.19(3), PCPA 2004). The SCI sets out the Council's policy for consulting and engagement with individuals and stakeholders.

5.5.3 In accordance with the requirements of the Town and Country Planning (Local Planning) (England) Regulations 2012, the Council must publish, prior to adoption, a consultation statement explaining (i) who was consulted, (ii) a summary of the issues raised through representations and (iii) how any such issues raised in representations have been addressed in the SPD.

5.5.4 The Council may withdraw the SPD at any time before it is adopted under s.23 PCPA 2004 (s.22 PCPA 2004). If the Council withdraws the SPD then it must as soon as reasonably practicable publish a statement to that effect on its website and make it available for inspection, send notification to any person or body which made representations on the SPD under reg 13(2) of the 2012 Regulations, and cease to make any documents relating to the withdrawn SPD available in accordance with reg. 35 of the 2012 Regulations (other than the statement of withdrawal, reg. 15(1), 2012 Regulations).

5.5.5 The Council may also revoke a SPD (reg. 15(2), 2012 Regulations). Where a SPD is revoked, the Council must as soon as reasonably practicable cease to make any documents relating to the revoked SPD available in accordance with reg.35 of the 2012 Regulations, and take such other steps as it considers necessary to draw the revocation of the SPD to the attention of persons living or working in its area (reg.15(3), 2012 Regulations).

5.5.6 The Policy and Resources Committee is responsible for agreeing Local Plans (except for matters reserved to Full Council), as outlined in the Council's Constitution, Article 7.

5.6 Risk Management

5.6.1 Not progressing the draft SPD contains little risk given limited role of the SPD which does not provide any new planning policy but guides our understanding of the Council development plan policies. Development projects in the draft SPD area have already been granted planning permission without any weight being placed on the draft SPD.

5.7 Equality and Diversity

5.7.1 Section 149 of the Equality Act 2010, which came into force on 5th April 2011, imposes important duties on public authorities in the exercise of their functions, including a duty to have regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

For the purposes of this obligation the term "protected characteristic" includes:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;

- sexual orientation.

5.7.2 Officers have in considering withdrawal of the draft SPD and in preparing this report had due regard to the requirements of section 149.

5.7.3 An Equality Impact Assessment (EqIA) was undertaken for The Burroughs and Middlesex University SPD. The EqIA was updated following consultation and found that the SPD does not in the main lead to unacceptable adverse effects on different communities. The EqIA did highlight the potential loss of car parking for residents and places of assembly on The Burroughs.

5.7.4 Withdrawal of the SPD will not directly have any adverse impact on the above considerations, any future development proposals will be required to consider the above statutory duty and provide mitigation and reasonable adjustments to ensure cumulative impacts seeks to provide positive outcomes for all.

5.8 Corporate Parenting

5.7.1 N/A

5.9 Consultation and Engagement

N/A

5.9 Insight

5.9.1 N/A

6. BACKGROUND PAPERS

6.1 Policy & Resources Committee - 20th July 2021 2021 (Item 9) –
<https://barnet.moderngov.co.uk/documents/s65917/PR%2016th%20July%20-%20The%20Burroughs%20and%20Middlesex%20University%20SPD.pdf>

Policy & Resources Committee - 16th June 2021 (Item 8) – Barnet's Local Plan –
Publication - (Reg 19)

<https://barnet.moderngov.co.uk/documents/s65263/Barnets%20Local%20Plan%20Publication%20-%20Regulation%2019%20Town%20and%20Country%20Planning%20Local%20Planning%20Englan.pdf>