

# Birmingham City Council Report to Cabinet

26 April 2022



**Subject:** **ADOPTION OF SUPPLEMENTARY PLANNING DOCUMENTS (SPDS) - HOUSES IN MULTIPLE OCCUPATION SPD AND LARGE-SCALE SHARED ACCOMMODATION SPD**

**Report of:** **Paul Kitson, Strategic Director of Place, Prosperity and Sustainability**

**Relevant Cabinet Member:** **Councillor Ian Ward, Leader of the Council**

**Relevant O &S Chair:** **Councillor Kate Booth, Housing and Neighbourhoods**

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 008305/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

## 1. Executive Summary

- 1.1 To inform Cabinet of the outcome of the public consultation on the draft Supplementary Planning Documents (SPD) for Houses in Multiple Occupation and Large Scale Shared Accommodation carried out from 17 December 2021 – 28 January 2022 and to seek authority from Cabinet to adopt both SPDs attached as Appendix 1 and Appendix 2.

## **2. Recommendations**

- 2.1 To approve the adoption of the Houses in Multiple Occupation and Large Scale Shared Accommodation SPDs, attached at Appendix 1 and Appendix 2 as part of the city's planning framework against which planning applications will be assessed.

## **3. Background**

- 3.1 The adopted Development Management in Birmingham Development Plan Document (DMB) and the Birmingham Development Plan (BDP) set out policies which guides future development in the city and is used in the determination of planning applications.
- 3.2 The SPDs have been prepared to provide detailed guidance to support the implementation of polices in the DMB and BDP. This will assist prospective planning applicants, property developers and landowners, as well as decision makers and local residents understand how the Council intends to apply its planning policies in relation to Houses in Multiple Occupation and Large Scale Shared Accommodation.
- 3.3 Both SPDs were subject to 7-week consultation which sought views from a broad range of stakeholders. The Consultation Statement (Appendix 3) contains details on the main issues raised and how they have been addressed in the final SPDs. These are summarised in section 3.12 to 3.16 below.
- 3.4 The SPDs need to be adopted by the City Council in a timely manner to ensure the guidance and requirements can be used to influence decisions on planning applications.

### Houses in Multiple Occupation (HMO) Draft SPD

- 3.5 HMOs provide an important way of meeting the city's housing needs, particularly for people on low incomes, young professionals, students and the growing number of one person households. At the same time, high concentrations of HMOs can present a challenge to creating mixed, balanced and sustainable communities and impact on residential character and amenity.
- 3.6 Policy DM11 in the DMB sets out the City Council's local planning policy on HMOs which seeks to prevent harmful concentrations arising and ensure that such development provides a high quality of accommodation.
- 3.7 The HMO SPD provides detailed guidance on how each of the policy criteria in DMB11 will be practically applied, including the consideration and the taking into account of 'exempt accommodation'<sup>1</sup> which has grown significantly across the city in recent years.
- 3.8 The SPD also explains what an HMO is, in planning terms and identifies the circumstances where planning permission could be needed, provides an overview of HMO licensing requirements and a checklist of information that the City Council will require when submitting planning applications for HMOs.

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<sup>1</sup> Shared housing controlled or managed by registered social landlord, housing association or public bodies such as local authorities.

### Large Scale Shared Accommodation (Co-living) Draft SPD

- 3.9 Large Scale Shared Accommodation, commonly known as co-living, is a relatively new form of accommodation where residents rent a room within a purpose-built (or conversion) development which has shared amenities and facilities on a short-term basis. This type of accommodation can provide an alternative to traditional flat or house shares and can include additional services and facilities, such as room cleaning, on site gyms, communal workspaces and a concierge service.
- 3.10 Co-living is relatively new to the UK; schemes are mainly focussed in London and are emerging in core and other large cities. The target group tends to be young professionals or recent graduates, and singles or couples without children who cannot or choose not to live in self-contained homes or houses in multiple occupation. They are an intermediate and short-term form of accommodation.
- 3.11 Co-living is undefined in the Use Classes Order. This means that they would typically be submitted as a “Sui Generis” Use and are non-self-contained market housing. As the market is untested in Birmingham, it is important that planning guidance is provided to ensure that co-living schemes create quality residential accommodation in the right places to support the policies set out in Birmingham’s Local Plan and the Council’s objectives of creating sustainable neighbourhoods and better health and wellbeing for the city’s residents.

### Consultation on the SPDs

- 3.12 Both SPDs were subject to 7-week consultation which sought views from a broad range of stakeholders including residents’ associations, neighbourhood forums or groups, business groups, voluntary groups, interest groups, developers and agents. All contacts on the Planning Policy Consultation Database were notified and consultation documents were made available to view on BeHeard.
- 3.13 The consultation generated 125 individual comments on the HMO SPD and 147 individual comments on the Large-Scale Shared Accommodation SPD. The Consultation Statement (Appendix 3) contains details on the engagement that was carried out, the main issues raised and how these have been addressed in the final SPDs.

### Summary of the main issues raised on the HMO SPD

- 3.14 Overall, there was general support for the purpose of the SPD. The inclusion of the concentration of exempt accommodation in the assessment of planning applications for HMOs was strongly supported.
- 3.15 Concern was expressed about the loss of family housing and the need to re-balance neighbourhoods through the deconversion of properties back to family dwellings. The Council introduced a city-wide Article 4 HMO Direction in June 2020 and introduced a new policy (DM11) on HMOs through the recently adopted DMB. These tools provide the Council with greater control over the future growth of HMOs in the city. The Council is not able to mandate that existing HMOs (which are predominantly privately owned) are converted back to family housing or place restrictions on the continued use of a property as an HMO, however, it will be able

to explore and develop a loss of family housing policy through the preparation of the new Birmingham Plan.

- 3.16 Comments were made in relation to the importance of Secure by Design principles and the need to consult with Design out Crime Officers (WM Police). The SPD has been amended to reflect and emphasise the importance of creating safe and secure places.
- 3.17 General concerns about the issues caused by HMOs such as noise, antisocial behaviour, litter, parking and the enforcement of standards were raised. Some residents expressed a desire to see a complete moratorium on the licensing of and planning permission for further HMOs in the city, which is not an appropriate option given the need for such housing in the city. The overall strategy seeks to prevent harmful concentrations of HMOs arising, which is what Policy DM11 in the DMB, alongside the city-wide Article 4 Direction for HMOs seeks to achieve. The City Council are actively pursuing a Selective Licensing Scheme for 25 wards of the city that are impacted by a high percentage of private rented property and high levels of deprivation and crime. Should the scheme be approved by Government (further to approval by Cabinet) then all Private Rented Sector (PRS) properties in these wards will be required to hold a licence. This will give the City Council the powers to ensure that a suitable standard of accommodation is provided. The City Council is also exploring Additional Licensing (which relates to licensing for smaller HMOs that is not covered by mandatory licensing).
- 3.18 Several comments related to Policy DM11 of the DMB and the 'exceptional circumstances' part of that policy, as well as the data sources used to identify HMOs. Policy DM11 was subject to a separate process through the DMB which is now adopted and cannot therefore be amended. The interpretation of a 'single household' in determining whether a property is Use Class C3(b) or C3(c) was also raised but this is a matter established by case law and falls outside the scope of the SPD.
- 3.19 Detailed comments were made on the energy use of residential properties and the need to incorporate green infrastructure and biodiversity enhancements within development. Selective licensing will give the City Council the powers to ensure that landlords deliver at least minimum efficiency standards. These issues are addressed in the BDP and DMB and the SPD notes that developers will need to be aware that other local plan and supplementary planning documents may be relevant, providing a link to these documents.
- 3.20 Other suggested changes have been considered and where appropriate the SPD has been amended in response to the comments, including:
- A new paragraph which explains breaches of planning control and what the City Council will do in such instances.
  - A new sentence which explains how information submitted relating to the identification of HMOs will be considered by the City Council.
  - Removal of the width restriction to alleyways in relation to the implementation of the sandwiching and continuous frontage criterion.

- Removal of the exemption to sandwiching and continuous frontage applying to detached and semi-detached properties where the gap between the main part of the properties is less than 1 metre.
- Further detailed and clarification provided in relation to the marketing evidence required to demonstrate a lack of demand for single family use of a property.
- Explanation of the status of the BDP.

### Summary of the main issues raised on Large-Scale Shared Accommodation (LSSA) SPD

- 3.21 There was general support for the purpose of the SPD and it was considered to be a useful document overall. Developers highlighted the benefits of LSSA in providing professionally managed shared accommodation combating high levels of HMOs in the city and thereby contributing to the release of family dwellings that would otherwise be used as HMOs.
- 3.22 Comments were raised in relation to the definition of LSSA. The SPD has been amended to clarify that the size threshold is indicative in order assist decision makers in identifying developments where the SPD is applicable, given the fact that there is no formal planning definition and that there is no requirement for LSSA to provide at least 50 units.
- 3.23 Most of the respondents supported the principle of restricting LSSA to the city centre but one respondent strongly objected. The city centre has the highest levels of accessibility by public transport and is considered to be a reasonable basis for the location of LSSA at this early stage of the Birmingham co-living market.
- 3.24 A number of developers considered the space standards set out in the SPD to be too prescriptive. The minimum size of the private living accommodation was considered too large, whereas the Community Partnership for Selly Oak (CP4SO) considered it too small. The minimum floorspace for a single occupancy room has been amended from 27.5 sq.m. to 25 sq.m. to reflect updated evidence. This has been tested through an indicative layout of a 25 sq.m. room. It is considered that, at a minimum, this would provide an adequate living environment. It would also allow for future adaptability to NDSS (National Described Space Standard) compliant dwellings.
- 3.25 To strike a balance between ensuring that the living accommodation provided in LSSA contributes to the health and wellbeing of its occupiers and is not overly rigid so as to prevent innovation or allow for site specific circumstances, some flexibility has been added into the SPD to allow for exceptions to the minimum where a robust justification exists.
- 3.26 Some developers disputed the requirement for a needs assessment. As the LSSA market is in its infancy in Birmingham, it is considered necessary for proposals to demonstrate that it meets a local need in accordance with BDP Policy TP30.

However, the detailed expectations in relation to the needs assessment has been amended in response to the comments.

3.27 The majority of respondents agreed that affordable housing should be provided in accordance with BDP Policy TP31 'Affordable housing' which allows for the characteristics of multiple units of private rented sector to be taken into account when assessing viability.

3.28 Some respondents advocated for carbon neutral buildings and the incorporation of green infrastructure and biodiversity enhancements within development. These issues are addressed in the BDP and DMB and the SPD notes that developers will need to be aware that other local plan and supplementary planning documents may be relevant, providing a link to these documents. However, these points have also been highlighted within the SPD.

3.29 Detailed comments from the Canal and Rivers Trust wanted the SPD to mention the importance of canals in promoting sustainable transport and providing for outdoor amenity. Comments were made in relation to the management plan and monitoring and review. These comments have been taken into account in the final SPD.

3.30 Suggestions were made by the Community Partnership for Selly Oak (CP4SO) relating to information that should be included in the management plan. These suggestions have been included in the final SPD.

3.31 In addition to the above, other amendments to the SPD include:

- Inclusion of communal space per resident in the method for any price comparisons of accommodation.
- Additional guidance on two-person occupancy rooms.
- Further detail on the facilities to be provided within private rooms including desk space to allow for working from home (and communal workspace), storage, waste storage, seating, and space or facilities for other possessions.
- Additional information to be included in the management plan - crime prevention and anti-social behaviour measures, cycle storage, responsibilities of site staff, measures to promote good neighbourliness and annual monitoring and review.
- Removal of the preclusion to letting to full time students as there is no robust justification to exclude them. However, the SPD has been amended to say that children will not be expected to be accommodated in large scale shared living developments. An assessment will be made on a case by case basis and where appropriate a condition will be imposed limiting occupation to over 18-year olds.
- Encouraging development to be designed in a way that can be easily converted into self-contained policy compliant dwellings so as to provide flexibility to respond to changing needs if required.

#### **4. Options Considered and Recommended Proposal**

- 4.1 **Option 1- Do not adopt the SPDs:** Without the adoption of the SPDs there is a risk that development will not meet the requirements and expectations of the City Council, communities and stakeholders. In turn this will assist in facilitating poor or inappropriate development.
- 4.2 **Option 2 – Adopt the SPDs:** This is considered the most appropriate way forward and necessary to enable the City Council’s planning policies to be applied effectively and consistently. The recommended proposal is to adopt the SPDs.

#### **5. Consultation**

- 5.1 The Cabinet Member for Homes and Neighbourhoods has been briefed on the SPDs. Officers from Development Management, Planning Enforcement, City Design and Conservation, Housing Strategy, the Private Rented Sector Team and Legal Services and have also been involved in the preparation of the SPDs.
- 5.2 The DMB and BDP itself has been subject to extensive public consultation over a number of years. All consultations have been detailed in reports to Cabinet at various stages of the plan-making process and has been carried out in accordance with the City Council’s adopted Statement of Community Involvement, under the provisions of the Planning and Compulsory Purchase Act 2004, and the revised procedures required by the Town and Country Planning (Local Planning) (England) Regulations 2012.

#### **6. Risk Management**

- 6.1 The main risk associated with the absence of clear and detailed planning guidance on HMOs and Large-Scale Shared Accommodation is the facilitation of poor or inappropriate development.

#### **7. Compliance Issues:**

##### **7.1 How are the recommended decisions consistent with the City Council’s priorities, plans and strategies?**

- 7.1.1 The SPDs are consistent with the BDP and the DMB and the Council Plan 2018 to 2022 (updated 2019). It will support delivery of the primary goals of an entrepreneurial city, an aspirational city, a fulfilling city to age well in and a great city to live in.

##### **7.2 Legal Implications**

- 7.2.1 The relevant legal powers for adopting the SPD are set out in Part 2 of the Planning and Compulsory Purchase Act 2004 (as amended), with detailed requirements set out in the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). This includes a requirement for a Consultation Statement (Appendix 3) and an Adoption Statement (Appendix 4). The SPD also needs to be consistent with the National

Planning Policy Framework, Birmingham's Local Plan and prepared in accordance with Birmingham's Statement of Community Involvement (2020).

7.2.2 Under the requirements of the European Union Directive 2001/42/EC (Strategic Environmental Assessment (SEA) Directive) (which is "retained EU Law" following the exit of the United Kingdom from the European Union on 31 December 2020 as the directive was given effect to by domestic legislation) and Environmental Assessment of Plans and Programmes Regulations (2004), specific types of plan that set the framework for the future development consent of projects must be subject to an environmental assessment, unless they fall within one of the exceptions to this requirement. Regulation 9 requires that the authority should make a formal determination as to whether or not the plan is likely to have significant environmental effects and therefore requires an SEA.

7.2.3 The City Council carried out a screening assessment of the SPDs (Appendix 5), under these Regulations, and concluded that a SEA is not required as:

- The documents do not set the framework for future consents under the Environmental Impact Assessment Directive;
- and Appropriate Assessment under the Habitats Directive is not required; and
- There is no pathway or mechanism for significant environmental effects to arise as the SPD is for guidance purposes, being an elaboration of existing policies in the BDP and DMB.

7.2.4 Comments received from the relevant statutory consultees for this process (Natural England, the Environment Agency and Historic England) supported the City Council's opinion.

### **7.3 Financial Implications**

7.3.1 Preparation of the SPDs have been carried out using existing Planning and Development staff resources. These costs have been funded from the Places, Prosperity and Sustainability Directorate's approved revenue budgets.

7.3.2 There are no direct financial implications arising from the recommendation in this report.

### **7.4 Procurement Implications (if required)**

7.4.1 No implications.

### **7.5 Human Resources Implications (if required)**

7.5.1 No implications



## **7.6 Public Sector Equality Duty**

7.6.1 An Equalities Analysis has been undertaken and has been updated following public consultation (Appendix 6). The Equalities Analysis has not identified any specific impacts the SPDs will have on the protected characteristics. The developments will lead to improvements for the local population in terms of providing good quality accommodation and protecting amenity.

## **8. Appendices**

- Appendix 1 – Houses in Multiple Occupation Supplementary Planning Document
- Appendix 2 – Large Scale Shared Accommodation Supplementary Planning Document
- Appendix 3 – Consultation Statement
- Appendix 4a & b - Adoption Statements
- Appendix 5a & b – Strategic Environmental Assessment Screening for the HMO and Large-Scale Shared Accommodation SPDs
- Appendix 6 – Equalities Analysis

## **9. Background Documents**

- Birmingham Development Plan (2017)
- Development Management in Birmingham (2021)