Appendix A

An Inquiry Report of the:

Environmental Scrutiny Committee

SUPPLEMENTARY PLANNING GUIDANCE

October 2022

CARDIFF
CAERDYDD

Cardiff Council

CONTENTS

FOREWORD

To be completed

Include T&F Membership – Cllr Patel, Cllr Sandrey as well as Cllr Lancaster and Cllr Wong.

October 2022

TERMS OF REFERENCE

1. **To explore planning policy in Wales to understand <u>when</u> to use Supplementary Planning Guidance by**:
    - Examining the relationship between the Replacement Local Development Plan, Supplementary Planning Guidance (SPG), and other planning policy tools, such as Technical Guidance Notes and Planning Advice Notes.
    - Understanding which planning policy tool is most appropriate to use when.
    - Investigating when SPG can be used to inform adopted LDP policies, and the timescales involved
    - Considering the "weight" to be afforded to SPG against adopted LDP policies.

2. **To explore planning policy in Wales to understand <u>how</u> to use Supplementary Planning Guidance by**:

    - Considering what is needed in the Replacement Local Development Plan to ensure it contains the policy 'hooks' required to enable SPG to pass Planning Inspectorate Wales tests
    - Considering whether new SPG's fall into the following three categories:
        - Design Guidance
        - Area Briefs/Masterplans
        - Development Management Policy notes
    - Researching useful good practice examples in Wales and in England where these are capable of being replicated in Cardiff, including how these were successfully implemented and used.
    - Identifying any areas of Welsh planning system that prevent use of good practice English SPG.

HEADLINE FINDINGS

HF1. Planning in Wales is plan-led, with local authorities required to adopt a local development plan (LDP). Crucially, planning legislation confers special status to development plan policy but not to Supplementary Planning Guidance (SPG). SPG therefore does not have the same status in law as a LDP but is a material consideration and can be afforded significant weight when considering development proposals.

HF2. The “Development Plan” including the National Plan and LDP are the primary bases upon which planning decisions are made. Therefore, it is important that the LDP contains evidence-based, precisely written policies, detailing the Council’s specific requirements on areas that are important to the Council for shaping developments, the rationale for these, and the criteria where the Council will make an exception and not apply the policy. The strength of the LDP in encompassing these contribute significantly to whether Planning Inspectorate Wales support planning decisions on appeal.

HF3. SPG supplements policy in the LDP – it cannot be used to make or amend policy but only to provide further technical guidance to support existing LDP policy. The LDP has to cover a large amount of policy areas and so cannot provide all the detailed technical information needed to implement LDP policies. SPG can be used to help guide decision makers and developers on how to achieve the objectives of the LDP policy. For SPG to be effective, there needs to be an effective LDP and the SPG needs to be both strong and strongly linked to the LDP.

HF4. To be effective, the LDP must conform to national planning policy (including the National Plan, Planning Policy Wales, Technical Advice Notes and other circulars and statutory instruments), be evidence-based, have policies that set out clearly what the Council wants to achieve and the scale and type of development, be precisely worded with detailed definitions, contain thresholds, numbers, percentages, targets and measures as relevant, set out the impact seeking to avoid and consequences if not avoided, and detail exceptional circumstances. These specifics and evidence will be subject to examination by the Planning Environment Decisions Wales inspectorate as part of the LDP examination. Once the LDP policies are adopted, they will carry the weight of the LDP and enable

planning decisions, which have to be made in accordance with adopted development plan policies.

HF5. For SPG to be strong, it must state which LDP policy and paragraph it is supplementing and that it is a material consideration. It should use positive, precise language and phraseology, be as concise as possible whilst remaining fit for purpose, evidence and explain how thresholds, numbers, percentages, targets, and measures are calculated, evidence and explain how the impact seeking to avoid is measured and how the consequences of not avoiding impact, the harms arising, are measured, and provide details on exceptional circumstances and how these are worked out and applied. In addition, Councils must take SPG through the approved process, including consultation, and should formally approve SPG at a meeting of full Council. Cardiff Council planning officers highlighted that the 'weight' to be applied to SPG can vary depending on its relevance to the issue, the amount of consultation undertaken, the level of governance in approving the guidance and other planning factors.

HF6. It cannot be stressed enough how important it is to have appropriate hooks and strong linkages between the LDP and SPG. This can be achieved by having a clear policy in the LDP for those areas where the Council knows it wants to have an SPG, by stating upfront and clearly in the SPG which LDP policy the SPG supplements, and by using positive language in the SPG, such as the SPG is a material consideration.

HF7. This Inquiry heard from the Planning and Environment Decision Wales witnesses that the Planning system is not designed for absolute '*thou shalt not ever*' policies – it is designed to enable shades of grey so decision makers can take into account the different factors that affect a particular development.

KEY FINDINGS

Local Development Plan

Scope of LDP

KF1. LDPs must have regard to national planning policy and take an evidence-based policy approach to address local issues. In Cardiff, the LDP will need to contain policies to cover

the breadth and complexity of Cardiff's planning landscape, ranging from urban areas, river corridors and woodland areas to post-industrial landscapes.

KF2. Cardiff Council needs to think carefully about what it seeks to achieve and how best to reach this, so that LDP policies are clear and do not cause unintended harms. It needs to make careful decisions on which policy areas to include in the LDP, including whether new policies are needed, for example a tall buildings policy.

KF3. This Inquiry heard that it is important LDP policies embed tackling the climate change and biodiversity crises and enable the achievement of Cardiff being a Carbon Neutral City by 2030.

Language in LDP

KF4. This Inquiry heard that it is important the language used in LDP policies is precise, with proper definitions, specified targets and measures. General statements and vague wording must be avoided. Whilst the LDP is meant to be a fairly slim document, it must contain enough detail for policies and SPG to stick, without becoming too lengthy and unwieldy.

Evidence in LDP

KF5. LDP policy must be evidence based – it is essential the Council has evidence to support policy requirements, such as thresholds, numbers, and percentages, and evidence of the harms the policy is seeking to avoid and the impact that will result if these harms are not avoided.

Exceptions in LDP

KF6. It is important for LDP policy to set out exceptional circumstances/ criteria where the local planning authority may depart from the principles of the policy, where this is in the over-riding interest. This gives decision makers clarity and flexibility in specific circumstances.

LDP Preparation

KF7. The LDP preparation process is set out in legislation and includes the need to involve local stakeholders and local populations. Producing an LDP is expected to take 3-4 years and is agreed with the Welsh Government through the preparation of a 'Delivery Agreement'.

KF8. The LDP preparation process includes examination by the Planning Environment Decisions Wales inspectorate. Their examination tests whether there has been sufficient consultation and whether there is a robust evidence base for policies.

KF9. This Inquiry heard that Planning Inspectors are encouraged to say, during the examination stage, if a policy needs tightening to achieve the LDP's stated aims.

Updating LDP – responding to emergencies

KF10. The Inquiry heard concerns that the LDP process does not allow for rapid response to emerging challenges, such as the biodiversity, nature and climate emergencies and the Covid-19 pandemic.

KF11. Members believe that, as the replacement LDP Vision includes ensuring Cardiff is carbon-neutral by 2030, the replacement LDP will need to embed tackling the climate change, nature, and biodiversity crises. However, Members recognise the challenges posed by the need to respond appropriately and quickly to as yet unknown crises. Members believe the short-term review process, set out below, provides a mechanism to address this.

KF12. Local authorities can carry out a short-term review if they find that a policy is not delivering as intended. These reviews take close to 2 years to complete and require the Planning Environment Decisions Wales inspectorate to schedule inspector time to look at the review.

KF13. Witnesses from the Planning Environment Decisions Wales inspectorate commented that, as Cardiff is underway with its replacement LDP, it is not worthwhile carrying out a short-term review currently, unless something is felt to be a major issue.

Supplementary Planning Guidance

Status and Weight of SPG

KF14. Supplementary Planning Guidance (SPG) derives from LDP policy, which provides the substantive intended policy, the 'hook.' SPG does not have the same status as the LDP in

law due to the way the legislation has been drafted. SPG is a material consideration but is not enforceable.

KF15. The English planning system enables Supplementary Planning Documents (SPD) to be taken as part of the Local Plan document and thus be part of the statutory process and examined. This gives these SPD added weight. There is no similar provision in Wales.

KF16. During his evidence to the Inquiry, Dr Harris, Cardiff University, raised the possibility that, in the absence of a similar system to England, an independent review of SPG may add weight to SPG. This approach has not been tested or substantiated in Wales.

Scope of SPG

KF17. SPG helps guide decision makers and developers on how they might achieve the aim of the LDP policy, how the policy is going to be interpreted, and how to implement LDP policy. They provide technical guidance, design parameters and minimum/ maximum standards, for example for parking, floorspace etc., and can be site specific masterplans, area-based guidance, design guidance or development management policy notes. SPG should set out the mechanism by which thresholds, numbers and percentages are calculated, and provide detail on harm(s) seeking to avoid and the impact if these harms are not avoided, and exceptional circumstances. SPG can only provide additional advice and guidance and cannot contain the criteria for deciding planning applications upfront.

KF18. Whilst SPG derives from LDP policy, this Inquiry heard that SPG needs to be kept relevant, within the bounds of the LDP policy, for example by:

i. updating SPG to reflect changes in the legislative, policy and local government landscape
ii. ensuring SPG are future-proofed and address the Climate and Nature emergencies
iii. introducing new SPG as needed, such as for tall buildings and conservation of historic buildings.

Style of SPG

KF19. This Inquiry heard that SPG should be as concise as possible whilst remaining fit for purpose. They should use positive, precise language and:

- Cite LDP policy and paragraph upfront
- State SPG is a material consideration

- Be clear and unambiguous re what the Council is expecting
- Use positive phraseology, such as 'e*xpectations of local authority'* and '*basis for negotiations'*
- Contain evidence for thresholds, numbers, percentages
- Contain details of the harm(s) the SPG is seeking to avoid and the implications if harm(s) is not avoided
- Contain details of exceptional circumstances
- Not state '*this is a non-statutory document.'*

KF20. This Inquiry heard that the phraseology and content of SPG can be strengthened by using an iterative consultation process that enables stakeholders and the general public to work with the Council to suggest improvements and tighten wording.

Exceptional circumstances in SPG

KF21. This Inquiry heard from the Planning and Environment Decisions Wales inspectorate witnesses that the planning system is not designed to be prescriptive, and there has to be some flexibility to enable decision makers to apply judgement within the context of the LDP vision and objectives.

KF22. To provide a framework for flexibility, the LDP and SPG need to provide clear advice on the exceptional circumstances where the usual LDP and SPG expectations will be disapplied in the over-riding interest. Providing detail in the SPG on exceptional circumstances gives decision makers clarity on when flexibility is required, when the impacts the SPG seeks to avoid are outweighed by the individual circumstances. Cardiff Council planning officers added that each development proposal has to be considered on its own merits, having regard to all factors and with planning officers having the consider the 'planning balance' in the public interest.

KF23. The SPG should provide details on the exceptional circumstances, the evidence to support these, the calculations that will be used to reach a decision where exceptions relate to thresholds, numbers or percentages, and the way in which the Council will approach the exceptional circumstance.

Strong SPG

KF24. This Inquiry expressly sought the views of witnesses on how to strengthen SPG and, specifically, how to ensure they are strong enough to withstand appeals against local Planning Committee decisions that rely on SPG.

KF25. The Inquiry heard that Planning Inspectors will give considerable weight to SPG where:

i. it complies with national planning policy
ii. it is clearly linked to the substantive policy within the LDP
iii. it has been subject to public consultation, and
iv. it has been approved by Council as supplementary planning guidance.

KF26. This Inquiry heard that the following factors also strengthen SPG:

i. positive phraseology
ii. clearly stating the impact they seek to avoid and the implications if this impact is not avoided
iii. evidencing specifics in the SPG such as thresholds, numbers, and percentages, harms avoiding and the impact if these harms are not avoided, and
iv. providing details of exceptional circumstances.

KF27. Swansea Council provided the Inquiry with examples of cases where the Planning Inspector upheld decisions in favour of the local planning authority, following strengthening of their LDP policy and SPG for Houses in Multiple Occupation (HMOs).

KF28. Dr Harris, Cardiff University, mooted the possibility of consulting on critical SPG in parallel with LDP, so that these SPG go through the same process as the LDP and thereby draw weight from this. Witnesses from the Planning and Environment Decisions Wales inspectorate commented that they could see the advantages to this. However, both Dr Harris and witnesses from the Planning and Environment Decision Wales inspectorate highlighted that this would be resource intensive, as it would require officers to draft LDP policy and SPG in the same timeframe, and therefore there may be capacity issues that prevent this taking place. However due to the way the current legislation has been drafted, planning legislation only confers special status to development plan policy and not to Supplementary Planning Guidance (SPG).

Identifying SPG

KF29. Cardiff Council planning officers highlighted that, in their view, there is merit in identifying where future SPG will be required at an early stage in the replacement local development plan preparation and consulting on this. They added that work on the evidence base could then be used to inform new SPG quicker following adoption of the Plan. Likewise, existing SPG that remain fit for purpose could be brought forward quicker in early tranches on SPG preparation.

Consultation on SPG

KF30. The Inquiry heard that SPG must be consulted on and that the Council needs to set out how they have assessed representations, responded to these and whether they have made resultant changes to the SPG. As SPG derives from LDP policy, it is essential to ensure LDP consultation is right, so that the LDP is robust, passes examination and is adopted.

KF31. The Inquiry heard conflicting views on SPG consultation in Cardiff, to date. Dr Harris commented that he could see, on Cardiff Council's website, that SPG have been consulted on, that representations have been assessed and responded to, and that SPG have been approved by Council resolution. However, Cardiff Civic Society wanted to see a more expansive consultation, as they felt examples and suggestions made by themselves and other stakeholders had not been taken on board. Cardiff Council planning officers explained to the Inquiry that consultation listens to a variety of views, sometimes conflicting views, and that reasons are given for amendments; however, it is not possible to take on board everyone's, sometimes conflicting, views. They emphasised that SPG include appendices to identify the consultation responses and the actions/ changes made following consultation, which helps add 'weight' as does the fact the Council consults for a reasonable period, publicises this consultation and seeks to approve SPG through Cabinet and Full Council.

KF32. Cardiff Future Wellbeing Alliance witnesses emphasised the replacement LDP and SPG consultation process is a real opportunity to engage, educate, increase understanding, and build trust in the planning process. They highlighted the need for engagement and an iterative process, to seek views once citizens know more about the planning system, rather than the current, periodic consultation exercise. Cardiff Council planning officers stated that they appreciated the point made, adding that the consultation

process is governed by legislation with national guidance the Council needs to follow. They added that they have made concerted efforts to amplify community voices, including children and young people, throughout the replacement local development plan process.

Ensuring SPG are Accessible

KF33. This Inquiry heard from several witnesses that there is a need to ensure the accessibility of SPG by:

i. Including all SPG on a specific section of the Council's website
ii. Ensuring the status of SPG is clear
iii. Replacing draft SPG with approved SPG
iv. Providing a table of proposed SPG, clearly stating where these later morph into other planning tools, such as Technical Guidance Notes
v. Ensuring documents are capable of being downloaded onto mobile devices without compromising their usability.

KF34. Cardiff Council planning officers explained that there is a section on the Council's website for SPGs, with a list of approved SPGs, a page for draft SPGs for consultation, and a list of related Technical Guidance Notes. They stressed the need for Council website documents to meet the accessibility regulations that apply to public sector bodies[1].

Good Practice SPG

KF35. Members undertaking this Inquiry were keen to find good practice SPG to illustrate the points made about how and when to use SPG effectively. They sought the advice of the Planning and Environment Decisions Wales inspectorate officers and were advised that:

a. in general, the best LDP and SPG are the simplest.
b. whilst policies in England and Wales are diverting, the principles and mechanisms of the planning systems are the same and there is no harm in looking for good practice SPG examples in England.

KF36. Members also heard, from Cardiff Civic Society, that, given the range of SPG in England and Wales, it is essential for the Council to be clear what it is aiming to achieve so that relevant good practice examples are selected.

[1] Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018

KF37. Bearing this advice in mind, the Inquiry sought witnesses' views on good practice SPG relating to biodiversity, climate change, and sustainability – given the LDP Vision aims to be carbon-neutral by 2030 and to tackle the climate and nature emergencies - and Houses in Multiple Occupation (HMO) and Purpose-Built Student Accommodation (PBSA) – as Members are aware of issues in Cardiff relating to these areas. The body of this report cites the following good practice examples:

a. Bath & North-East Somerset Council – Houses in Multiple Occupation SPD
b. Bristol Council – Climate Change SPG
c. Bristol Council – Trees SPG
d. Cornwall Council – Biodiversity SPG
e. Monmouthshire Council - Green Infrastructure SPG
f. Newcastle City Council – Sustainability Statements Planning Process Note
g. Public Health Wales – Healthy Weight Environment SPG template
h. Swansea Council – Biodiversity and Development SPG
i. Swansea Council – Houses in Multiple Occupation and Purpose-Built Student Accommodation SPG
j. Swansea Council – Placemaking - Street Trees SPG
k. Swansea Council – Trees, Hedgerows and Woodlands SPG
l. Woking Council – Climate Change SPG.

Other

Other planning tools

KF38. This Inquiry heard that, whilst there are other planning tools alongside the LDP, none of these carry more weight than SPG. Tony Thickett, Deputy Chief Planning Inspector, stated Councils can prepare what they like and call it what they like but they need to get it approved as SPG for it to have as much weight as possible. Additionally, the SPG must have a strong linkage to an existing substantive policy within the LDP.

Annual Monitoring Report (AMR)

KF39. Councils are required to produce an annual monitoring report that sets out progress in delivering the LDP policy objectives and highlights issues with SPG. This Inquiry heard that Cardiff Council's 5th AMR does not highlight concerns re SPG, stating that most SPG are working as intended. Members of the Inquiry were aware that the LDP Review, March 2021, identified, at point 3.36, '*the issue of sub-divisions/ conversions into HMOs and flats*

is a matter which is considered to warrant a detailed analysis in response to concerns regarding the cumulative impact of proposals on local communities and amenity considerations of occupiers and neighbours. Whilst additional SPG has been prepared, appeal decisions are not always supporting the Council's position, so a review is considered timely.' Members therefore concluded that the Annual Monitoring Report required strengthening, to make it clearer to readers the areas needing actions to address deficiencies, perhaps by highlighting these and including an action plan, with steps to address these deficiencies.

Regional Strategic Development Plans (SDP)

KF40. In the future, Wales's planning system will have three tiers – the national tier set out in Future Wales, the regional tier set out in SDPs and the local tier set out in LDPs.

KF41. As yet, there is no guidance or framework regarding SDPs, although Welsh Government are currently consulting on SDP preparation. Members heard that concerns have been raised that the resources required to prepare SDPs will impact on the preparation of local authority SPG as local authority staff may be called on to draft the SDP. It may also be possible that the SDPs themselves require SPG; this is still to be determined.

Role of Council

KF42. Over the course of this Inquiry, it has become clear that it is essential for the Council to:

a. Think through what outcomes it wants to achieve and whether this is best achieved via LDP policy or other mechanisms
b. Consider carefully whether proposed LDP policies may result in unintended harms
c. Think carefully about which policies to include in the LDP and what SPG is required
d. Think carefully about what information needs to go into the LDP policy and what information can be deferred to SPG, using good practice examples to assist consideration
e. Ensure SPG are able to be linked to specific policies in LDP
f. Ensure SPG are up to date, reflect climate and nature emergencies, and address issues that have grown in importance since the last LDP, such as tall buildings and conserving historic buildings, post-pandemic recovery, cost of living crises, homelessness and affordable housing
g. Consider whether to consult on some SPG in parallel to LDP
h. Examine how to ensure an accessible and inclusive consultation and engagement process for LDP policies and SPG, in line with legislation and national guidance
i. Assess how best to publicise SPG, for example by ensuring SPG are accessible.

RECOMMENDATIONS

This Inquiry sought to understand how and when to use Supplementary Planning Guidance (SPG) and how to strengthen planning policy to ensure SPG is robust. Having considered the evidence to this Inquiry, the Environmental Scrutiny Committee makes the following recommendations to ensure the replacement Local Development Plan process establishes strong foundations for required SPG and that future SPG are fit for purpose.

R1. Members recommend that Cabinet task officers to identify opportunities to seek views from the public and stakeholders on existing SPG and the need for new SPG, as early as possible in the replacement LDP process.

R2. Members recommend that Cabinet task officers to use Headline Findings 1 to 7 and Key Finding 14 to Key Finding 37 when reviewing existing SPG and drafting new SPG, as part of the replacement Local Development Plan process, to ensure future SPG is fit for purpose.

R3. Members recommend that Cabinet task officers, as part of the replacement Local Development Plan process, to gather and collate the evidence required to support LDP policy and associated SPG, including evidence of any harms these seek to avoid and evidence of the implications if these harms are not avoided.

R4. Members recommend that Cabinet task officers, as part of the replacement Local Development Plan process, to review the findings of this Inquiry with regard to Houses in Multiple Occupation SPG, identify aspects that will assist Cardiff Council (including collating evidence of harm) to strengthen its LDP policy and SPG re Houses in Multiple Occupation and flat conversions, and build these into relevant draft SPG for consultation.

R5. Members recommend that Cabinet task Planning Officers to meet with local members on specific issues/ hot topics that impact their wards to help inform the review of current SPG, and support the collation of evidence, as part of the replacement Local Development Plan process.

R6. Members recommend that Cabinet task Planning Officers to analyse and regularly publish data on the number of successful and unsuccessful appeals at Planning and

Environment Decisions Wales (PEDW), in regard to Cardiff SPG, to inform where SPG are effective/ ineffective, to commence by 31 March 2023.

R7. Members recommend that Cabinet task officers to use Headline Findings 1 to 7 and Key Finding 1 to Key Finding 6 when reviewing existing LDP policies and drafting new LDP policies, as part of the replacement Local Development Plan process, to ensure future LDP policies are fit for purpose and provide the hooks and linkages between the LDP and SPG.

R8. Members recommend that Cabinet task planning officers to work with web content officers to ensure SPG on the Council's website is accessible on portable devices, is clearly labelled as either draft or approved, and is the latest version available, by 31 March 2023.

R9. Members recommend that Cabinet task officers to strengthen future Annual Monitoring Reports, by highlighting any areas requiring work to address deficiencies and including an action plan detailing the steps to achieve this.

During the course of this Inquiry, Members reflected that much of what they had learned about the LDP and SPG, the interface between them and their essential nature, was new to them, despite having attended internal Cardiff Council training on planning. Members believe that this knowledge gap exists for other Members as well and believe it would benefit Cardiff Council for this to be addressed, enabling Members to better focus their enquiries. Therefore:

R10. Members recommend that Cabinet task officers to arrange external training for new and existing Members on the areas covered by this Inquiry, by the end of March 2023.

R11. Members recommend that Cabinet consider whether there is a need to offer Member training on specific issues/ hot topics prior to the adoption of the replacement Local Development Plan.

There are likely to be a number of either new or amended SPG following adoption of the replacement Local Development Plan. Members recognise effective scrutiny of SPG is crucial and that the findings of the Inquiry are useful to assist this. Therefore:

R12. Members recommend that Cabinet task the Head of Democratic Services to use the findings of this Inquiry to prepare a checklist for scrutiny committees to use when undertaking future scrutiny of SPG.

OVERALL CONTEXT

1. Supplementary Planning Guidance (SPG) is precisely that – it *supplements* existing policy in the Local Development Plan (LDP), to help *guide* decision makers and developers on how to achieve the LDP policy.

2. The LDP is the primary basis on which planning application decisions are made. It is essential that policy areas that are important to a Council for shaping development are written into the LDP, with the necessary level of detail.

3. SPG are not crucial to planning application decisions – they are a material consideration but the policy which they amplify must already exist in the LDP. SPG cannot be used to set or amend policy – the policy has to be in the LDP.

4. In order to have effective SPG, a Council must have an effective LDP.

5. LDPs have to fit with the legislative framework for Wales and the national planning policy set by Welsh Government. Otherwise, they will be deemed unsound by the Planning Inspectorate, meaning they cannot be adopted by the local authority and implemented.

PLANNING IN WALES - BACKGROUND

6. The planning system in Wales is 'plan-led,' which '*means that national and local planning policy is set out in formal development plans which describe what developments should and should not get planning permission, how land should be protected and seeks to ensure a balance between development and environmental protection in the public interest.'* [2] These plans include Planning Policy Wales and the National Development Framework at a Welsh Government level, and Local Development Plans at a local authority level.

7. These plans need to fit with the legislative framework for planning in Wales, provided by the following:

[2] '*Comparison of the planning systems in the four UK countries'* January 2016 – National Assembly for Wales Research Paper

Specific Planning Acts

- Town and Country Planning Act 1990
- Planning and Compulsory Purchase Act 2004
- Planning Act 2008
- Planning (Wales) Act 2015

Overarching legislation

- Wellbeing of Future Generations (Wales) Act 2015
- Environment (Wales) Act 2016
- Historic Environment (Wales) Act 2016
- Public Health (Wales) Act 2017

8. The Welsh Government's Planning Policy Wales (PPW) sets the context for planning in Wales, including the context for Local Development Plans and, therefore, Supplementary Planning Guidance. PPW is updated as required, following consultation, with the latest edition issued as an online document only. It is supplemented by technical advice notes, circulars, and policy clarification letters.

9. The Welsh Government's Minerals Planning Policy Wales provides the planning policy framework for mineral extraction and related development and their Natural Resources Policy sets out the need to deliver nature-based solutions, increase renewable energy and resource efficiency, and take a place-based approach.

10. The Welsh Government has issued 24 Technical Advice Notes (TANs) to provide detailed guidance on specific areas, and 2 Minerals Technical Advice Notes (MTANs).

11. The Welsh Government's National Development Framework (NDF) sets out national spatial planning policies and Local Development Plans must take the NDF into account. It is known as 'Future Wales: The National Plan 2040'.

12. The Planning (Wales) Act 2015 set out provision for regional development plans, known as Strategic Development Plans (SDPs). The aim is to deal more effectively with cross-boundary issues and achieve better planning outcomes. The new Corporate Joint

Committees are responsible for developing these. The development process mirrors the LDP process. Cardiff is in the South-East Wales strategic planning area.

13. The Welsh Government Building Better Places guidance was produced to assist recovery after the Covid-19 pandemic. The guidance promotes a placemaking approach that is people-focused and environment-led and states that the need for economic recovery should not be at the expense of quality, both in terms of health and well-being and in response to the climate and nature emergencies. The Welsh Government has also issued a Welsh National Marine Plan and Prosperity for All: A Low Carbon Wales.

LOCAL DEVELOPMENT PLANS

14. The Planning and Compulsory Purchase Act 2004 introduced a statutory requirement for each Local Planning Authority to produce an LDP that sets out proposals and policies for the future use of all local land, covering a period of 10-15 years. Once an SDP is in place, the Local Planning Authority will only be required to produce a 'light' version of an LDP for its area.

15. The Vice-Chair of the Planning Officers Society Wales, Tom Evans, explained to the Inquiry that Planning Act legislation confers special status to development plan policy (LDP) but not to planning guidance (SPG). Planning decisions must be made in accordance with planning legislation, in accordance with Future Wales and in accordance with adopted Local Development Plans.

16. Dr Harris, Senior Lecturer in Planning, Cardiff University, explained to the Inquiry that in the Welsh planning system, SPG is supplementary guidance as the name states, so therefore they are not crucial to planning application decisions: anything that Members really want planning decisions to hang on needs to have a policy in the LDP. So**, it is not just a case of thinking how to strengthen SPG: a Council needs to have a strong LDP, this is crucial – it is a matter of how the LDP forms the substantive policy as hooks for SPG.**

17. Members therefore sought to understand how best to frame and word an LDP to ensure that it is strong and forms strong hooks for SPG. Members explored the following topics:

scope and length of LDPs; witnesses' views on how to ensure a strong LDP, with strong hooks; and how to update an LDP.

Scope of LDP

18. The Vice-Chair of the Planning Officers Society Wales, Tom Evans, explained that LDPs must have regard to national planning policy, set out in Future Wales. Members also heard that the LDP must have regard to the SDP when it is produced. The technical term used is '*general conformity.'*

19. The Chief Inspector of Planning, Victoria Robinson, explained that LDPs address the issues that face their specific area and, therefore, LDPs across Wales will be different because of differences in local issues and the evidence that supports these policies e.g., Cardiff and Swansea will have issues with HMOs *(Houses in Multiple Occupation)* and PBSAs *(Purpose Built Student Accommodation)* and local evidence for this whereas Carmarthenshire would not, whilst other areas may have issues with barn conversions, for example, and also affordable housing levels will vary across Wales – there is no '*one size fits all'* for planning policy, it is not black or white, it's all about degrees.

20. In terms of the issues facing an area, it is important for a Council to think through what it wants to achieve and how best to reach this. The Vice-Chair of the Planning Officers Society Wales, Tom Evans, explained that LDP policies need to be clear about what they want to achieve, the scale and type of development – this has to be in the LDP as it is fundamental, it cannot be left to SPG to describe this.

21. In their written contribution, the Design Commission for Wales stated that strong general policies need to be included within the LDP that can be given more detail or specific application within SPG. They added that the topics of SPG should be established now so they can be linked to specific policies within the LDP, and reference should be made to SPG within the LDP.

22. The Deputy Chief Inspector of Planning, Tony Thickett, highlighted that it is important for Councils to think through the consequences of policies – intended and unintended consequences – to ensure that policies do not cause harm. He gave an example from Leeds, where their local plan included a proposed policy to refuse any further HMO

applications in Headingley – a student area. At the public sessions that are part of the examination process, Tony heard from an old man, who was in tears because this would mean he would not be able to sell his property – his was the last property in his street that was not a student house and the only people who would want to buy it would be people wanting to convert it into an HMO. This was an unintended consequence of the proposed policy and Leeds Council relented, as it had not wished to cause harm but to prevent harm. This illustrates the importance of thinking through what it is the Council wants to achieve and how best to reach this. Tony Thickett emphasised it is important for Councils to think through the potential consequences of 'absolutes.'

23. Both Cardiff Civic Society and Cardiff Future Wellbeing Alliance highlighted that the One Planet Cardiff strategy and commitment that Cardiff will be a Carbon Neutral City by 2030 will require LDP policies to embed this across the LDP, to ensure the climate change and biodiversity crises are addressed. They highlighted the LDP is critical to the success of achieving these stated aims.

'Dovetailing the One Planet Cardiff strategy with the LDP is critical – if do not get this right, then One Planet Cardiff will fail.'

Clare James

'Consultation has resulted in one big change being made to the draft Vision & Objectives and that is to include 'Cardiff will be a Carbon Neutral City by 2030' – this will be a huge task to build this into LDP policies, a big challenge.'

Lyn Eynon

24. The Welsh Government LDP Development Manual[3] sets out the following regarding the scope of LDPs:

> A plan will contain the strategy, policies, and allocations to address the key issues, based on robust evidence. It will shape and guide development proposals to sustainable locations, delivering the scale and type of growth and well-being required over the plan period. A plan will demonstrate how it delivers the National Sustainable Placemaking Outcomes, that development is deliverable, financially viable, phased and supported by infrastructure. LDPs will support consistent decision making across Wales.

[3] The Welsh Government manual for developing a local development plan is available online at: development-plans-manual-edition-3-march-2020.pdf (gov.wales) Downloaded 30/11/21

Length of LDP

25. The Deputy Chief Inspector of Planning, Tony Thickett, explained that the LDP is meant to be a fairly slim document, with the additional detail in SPG; a Council cannot put all the detail in an LDP as it would end up with a lengthy, unwieldy plan, so it needs to delegate to guidance how policy should be interpreted.

26. Members queried how Councils ensure that the LDP is detailed enough without it becoming too lengthy, particularly as the Inquiry was being advised that Councils need to put the right amount of detail in their LDP and cannot just include it in SPG. The Deputy Chief Inspector of Planning, Tony Thickett, explained that it is important the LDP include thresholds or numbers or percentages, and that the LDP policy says what the aim is. He highlighted that **it is far stronger to put the threshold in the LDP**. He cited Swansea's HMO policy which has the threshold in the LDP and also has exceptions criteria. So, Swansea's HMO approach carries the weight of the LDP, whereas Cardiff's SPG does not carry the same weight as the thresholds are not in the LDP.

27. Dr Harris, Senior Lecturer in Planning, Cardiff University, stated that it is a question of '*what is the detail?.'* If something is not in the LDP, it will not have the same weight. Therefore, Councils need to make careful decisions re what is in the LDP and what is not in the LDP – a policy for any eventuality will lead to an unworkable length but Councils need to create space in LDP for a bit more detail.

28. Members concluded that LDPs need to be detailed enough for policies and SPG to stick without becoming too lengthy and unwieldy.

How to ensure a strong LDP

29. The Inquiry sought the views of witnesses on how to ensure a strong LDP and heard that the following elements are key: language; evidence; exceptions; and process.

Language

30. Lyn Eynon, Cardiff Civic Society highlighted the need for Cardiff Council to tighten up the language in the LDP, calling for the replacement LDP to have precisely worded policies, with specifics such as targets and measures, rather than general statements and phrases. He stated that '*Compared to Swansea, Cardiff's LDP has no number or*

specifics, for example Policy H.5 - sub-divisions & conversions of residential properties – has very general statements and phrases, such as 'no material harm to amenity of nearby residences' which means it does not have the precision of Swansea's LDP. So, Swansea's LDP is well-defined unlike Cardiff's, which is not well-defined and therefore it is hard to prove whether an exception or not. Cardiff needs to put more precise detail into its LDP.'

31. Following his meeting with the Inquiry, Lyn Eynon emailed scrutiny services to add to the above, highlighting his concern that developers are using viability claims to evade the LDP affordable housing policy:
'*One of my observations was on how loose language in the LDP was allowing developers to evade the spirit of the LDP because they could not be pinned down on the letter of it.... Policy H3 on Affordable Housing is repeatedly evaded by developers through viability claims permitted under paragraph 5.11, as recently happened on Guildford Crescent. A paragraph in the Planning Statement for a current application 22/00415/MJR signals that this will done again for this large development of 331 flats. The policy seeks 20% affordable housing on brownfield sites that meet the identified criteria. It notes that affordable housing will be sought to be delivered on-site unless there are exceptional circumstances. The supporting text (Paragraph 5.11) confirms that in negotiating affordable housing, each proposal's actual contribution will depend on that scheme's capacity for provision. This is to ensure that the affordable housing contribution in itself will not make a scheme unviable. I would be grateful if you could pass this on to the Scrutiny Task and Finish team, as viability claims are making LDP Policy impossible to enforce.'*

32. Cardiff Future Wellbeing Alliance witnesses stressed that the LDP needs to be tighter on environmental issues. They stated that the LDP could be made stronger by introducing clear targets and measures and then having an SPG that explains the 'how.'

33. The Deputy Chief Inspector of Planning, Tony Thickett, explained that Councils need to think about what the objective is they are seeking and ensure there are proper definitions with enough detail. He gave a theoretical example of a local authority having very vague wording such as '*we like things that are nice-looking'* – that is a valid aim but there is no detail, nothing about how that is to be achieved, or what it means.

34. The Welsh Government LDP Development Manual[4] sets out the following regarding LDPs being clear and succinct:

> An LDP should be focussed, succinct and relevant to the key issues it is seeking to address. An LDP should not repeat national policy. Plans should not be a compendium of policies to cover every eventuality. Succinct LDPs should use plain language, avoid jargon, be accessible to the reader and enable effective plan review and revision.

Evidence

35. The Deputy Chief Inspector of Planning, Tony Thickett, stressed that LDP policy must be evidence based, and that it is essential to evidence thresholds, numbers, percentages, and impact trying to avoid, for example, what is the impact of having more HMOs than the policy states is acceptable, what is the tipping point, and where is the evidence to support this tipping point and the impact if this tipping point is breached?

36. Members sought assurance that council officers have been told about the need to evidence LDP policies and the Deputy Chief Inspector of Planning, Tony Thickett, confirmed that he has met with Cardiff Council planning officers and told them about the need to evidence LDP policies and SPG.

37. The Welsh Government LDP Development Manual[5] sets out the following regarding LDPs being based on robust evidence:

> A plan will contain the strategy, policies, and allocations to address the key issues, based on robust evidence.

Exceptional Circumstances

38. The Vice-Chair of the Planning Officers Society Wales, Tom Evans, explained it is important for LDP policy to set out exceptional circumstances, setting out the sort of circumstances where the Council may depart from the principles of the policy i.e., where this is in over-riding interest. This gives decision makers clarity and flexibility in specific circumstances to enable them to divert from the over-arching principles when this is in the over-riding interest.

[4] Available online at: development-plans-manual-edition-3-march-2020.pdf (gov.wales) Downloaded 30/11/21
[5] As above

39. The example cited to the Inquiry was Swansea Council's policy for Houses in Multiple Occupation (HMOs) and Purpose-Built Student Accommodation (PBSA). The LDP policy sets out exceptional circumstances where some long-standing empty properties may be allowed to become HMOs in specific circumstances. The HMO and PBSA SPG, December 2019, then provides more details on how exceptional circumstances are determined and the reasons for this, linking these back to the LDP policy.[6]

Process

40. The key stages in the LDP process – Preferred Strategy, draft LDP, deposit and examination - are set out in legislation. The Welsh Government manual for developing a local development plan is available online at: Development Plans Manual (Edition 3) March 2020 | GOV.WALES This sets out the steps to follow when preparing an LDP.

41. The Vice-Chair, Planning Officers Society Wales, Tom Evans, explained that timescales per se are not written in the legislation and LDP Manual – each local authority can go through the key stages of LDP process at different times – Cardiff and his authority, Swansea, have major sites and issues to plan for and engage on and the biggest populations to engage with and consult with, which is why it takes longer. He explained that, ultimately, if Council's rush the process, then 1) they do not involve stakeholders and the local populations as much as they should be 2) there is not enough time to evidence decisions and policies and 3) independent examination finds it an unsound process and one that can be picked apart by Inspectors. So, Councils should not rush the stages. It is an unwieldy process and can be frustrating for practioneers as much as others. He stated that, to be fair to Welsh Government, they have made moves to speed up the process by slimming down the key stages, so the aspiration is it takes 3-4 years to produce an LDP rather than 5-7 years, as previously. However, the timings will vary from local authority to local authority, depending on the scale and type of issues and the size of population to consult with.

42. Once the Local Planning Authority has prepared a draft LDP, known as a deposit plan, the Planning and Environment Decision Wales inspectorate[7] examines the deposit plan

[6] See Case Study Note on Page 29 of this report
[7] Planning Inspectorate Wales is now part of Welsh Government and is known as Planning and Environment Decisions Wales (PEDW)

and related documents to ensure the plan is 'sound' and that the views of all those who have commented have been considered. They report any changes that should be made to the plan. Their views are binding on the Local Planning Authority.

43. The Deputy Chief Inspector of Planning, Tony Thickett, confirmed that when he examines Plans he will say if policy needs to be tightened to achieve the stated aim, and that the Inspectorate encourages all Planning Inspectors to do that.

How to ensure strong 'hooks' in LDP

44. The Welsh Government's LDP Development Manual sets out that there must be an LDP policy or policy criterion that provides the development plan '*hook*' for an SPG; SPG cannot be linked to national policy alone. This point was emphasised by witnesses to the Inquiry:

'It is important to have the appropriate hooks and linkages between the LDP and SPG. SPG needs to derive from and be consistent with LDP policy – not national policy, must be linked to local policy in LDP that has been adopted'

Tom Evans, Vice-Chair, Planning Officers Society Wales

'SPG are parasitic – they suck their power from the LDP policy that they hook into.'

Dr Harris, Senior Lecturer in Planning, Cardiff University

45. Dr Harris, Senior Lecturer in Planning, Cardiff University, elaborated that Councils need to have a clear policy in the LDP for those areas where they know they want to have SPG. It is not sufficient to have SPG linking to several LDP policies, as this could weaken it. He cited Cardiff Council's Tall Buildings SPG that supplements five policies in the LDP and questioned whether this waters down the relationship between the SPG and LDP policies and therefore its weight and hook; it is having to call on 5 policies and hooks because there is not one policy in the LDP on tall buildings to give it direct strength and linkage – this could cause it to lose weight because it does not have a clear hook to pull on – it is pulling on too many related policies rather than one specific policy.

46. Dr Harris added that Councils need to try to get detail into the LDP to get the policy hooks strong; he highlighted that Councils may find Inspectors require the Council to strike out some of the detail if they feel the detail should be in a SPG rather than the statutory plan.

47. Dr Harris summarised that, to make LDP policy hooks strong:
    a. Have a clear policy in LDP - for those areas where you know you want to have an SPG, rather than SPG linking to several policies
    b. Be upfront and clear in SPG – start with clear statement of which policy in LDP the SPG hooks to, that '*this is the LDP policy, and this is what is being supplemented'.*
    c. Use positive language – state SPG it is a material consideration – e.g., Monmouthshire's Green Infrastructure SPG follows this positive tone – sharp and focused and explains why people should pay attention to it.

Updating LDP

48. Cardiff Civic Society highlighted that the pace of change since the LDP was adopted has been rapid, citing the Well Being of Future Generations Act, Brexit, and the Covid-19 Pandemic as some examples that have radically changed the context for the LDP. Nerys Lloyd-Pierce, Chair Cardiff Civic Society stated:

    'LDPs need to be less lumbering f they are going to be effective – they will be pretty much obsolete towards the end of their lifespan otherwise, and we need a Replacement LDP that is more moveable, particularly to be able to address crises such as biodiversity, nature and climate emergencies that are only going to accelerate'

49. However, the Vice-Chair, Planning Officers Society Wales, Tom Evans was less sceptical that LDP and policies will go out of date within the lifespan of the LDP, given the new process and timescales set out in the updated LDP manual. He stated that, if the main issues are covered by policies that SPG can build on and amplify, the LDP will be in a good place.

50. Having considered the above, Members believe that, as the replacement LDP Vision includes ensuring Cardiff is carbon-neutral by 2030, the replacement LDP will need to

embed tackling the climate change, nature, and biodiversity crises. However, Members recognise the challenges posed by the need to respond appropriately and quickly to as yet unknown crises. The short-term review process, set out below, provides a mechanism to address this.

Short-Term Review

51. The Inquiry heard, from the Deputy Chief Inspector of Planning, Tony Thickett, that local authorities can carry out a short-term review if they find that one policy is not delivering what the Council had intended or a particular area is not doing what the council wants it to do. These reviews take close to 2 years to complete and require the Planning and Environment Decisions Wales inspectorate to schedule inspector time to look at the review.

52. The Deputy Chief Inspector of Planning, Tony Thickett, clarified that, as Cardiff is underway with its replacement LDP, it is not worthwhile carrying out a short-term review, given the replacement LDP will be ready in 4 years and the short-term review would take nearly 2 years to complete.

53. The Chief Inspector of Planning, Victoria Robinson, added that normally, the need for a review is flagged by the Council's Annual Monitoring Review (AMR) report. To her knowledge, there has only been one short term review - in Snowdonia, a much smaller authority than Cardiff. She commented that, if she were in Cardiff Council's officers' shoes, she would be saying that Cardiff reviews their issues via the Replacement LDP unless something is felt to be a major issue.

CASE STUDY - Swansea Council – LDP policy re Houses in Multiple Occupation (HMOs).

Swansea Council were experiencing problems with their previous LDP policy not being upheld on appeal as it was not specific enough. Officers realised that the new LDP needed a more targeted, evidence-based policy and that they could not rely simply on SPG as, whilst SPG are a material consideration, the LDP policy is the primary basis on which decisions are made. Their discussions with Welsh Government indicated they were supportive of this approach.

The new LDP HMO policy sets out the actual requirements re HMOs in fairly detailed planning policy, setting out the principles developments are required to aspire to and accord with; SPG then supplements this providing more detail and description, so it is clear to developers what the Council means by the policy.

The new LDP HMO policy sets out a targeted approach that is evidenced based, includes definitions, and sets out clear requirements, for example not sandwiching property between two existing HMOs. It contains specific reference to how HMOs will be dealt with in small streets and describes unacceptable concentrations, with specific caps and maximum thresholds. Critically, it includes exceptional circumstances, spelling out when the LDP HMO policy may not be applied where this is in the over-riding interest; these centre on long-term empty properties that meet specified criteria, and provide decision makers with clarity and flexibility in specific circumstances.

The new LDP policy contains examples of how calculations are done to determine the above and has evidence to support them. Tom Evans, Vice-Chair of Planning Officers Society Wales and Placemaking and Strategic Planning Manager, Swansea Council, explained to Members that it was better to put this detail into the LDP policy as it needed to be properly consulted on, so that the Council could hear the views of stakeholders, which strengthens the policy, and so that it goes through examination.

Swansea Council's HMO and PBSA[8] SPG, December 2019, provides more details, linking this back to the LDP policy.

The Deputy Chief Inspector of Planning, Tony Thickett, cited Swansea Council's LDP HMO policy in his evidence to the Inquiry, stating that it is far stronger to put the threshold in the LDP and to include exceptions criteria. He stated that Swansea Council's HMO approach now carries the weight of the LDP, whereas Cardiff Council's SPG does not carry the same weight as the thresholds are not in the LDP.

[8] PBSA = purpose-built student accommodation

SUPPLEMENTARY PLANNING GUIDANCE (SPG)

54. The Inquiry sought the views of witnesses on the purpose, role, use, scope, and status of SPG. Members were keen to understand how to strengthen SPG and asked witnesses to share their understanding of how to add weight to SPG. In addition, the Inquiry explored the need to publicise SPG and update SPG. Members invited witnesses to share good practice examples, which were supplemented by desk-based research by the Inquiry's supporting scrutiny officer.

Purpose of SPG

55. The Chief Inspector of Planning, Victoria Robinson, explained that the purpose of SPG is to add clarity where Councils cannot have all the detail in the LDP as it is already a big document. The Vice-Chair Planning Officers Society Wales, Tom Evans, explained that the replacement LDP cannot provide all the details required, as otherwise the LDP would become too lengthy and unwieldy, and that these details then need to be in SPG.

Role of SPG

56. The Vice-Chair Planning Officers Society Wales, Tom Evans, stated that the role of SPG is to explain to applicants and decision makers how LDP policy is going to be interpreted. **Councils need to think carefully about which details to put in the LDP, so they have the weight of the LDP, and which can be deferred to SPG, which puts some meat on the bones and helps to interpret the LDP policy.** He added that Swansea Council's LDP contains fairly detailed planning policy that sets out the principles that development is required to aspire to and accord with, and the SPG supplements this by providing more details.

57. The Deputy Chief Inspector of Planning, Tony Thickett, stated that SPG is not there to replace the LDP – the overarching policy of whatever it is that the council is trying to achieve should be set out in the LDP and then the SPG supplements this policy to help guide decision makers and developers on how they might achieve the aim of the policy. He gave the following examples:

    i. have an affordable housing LDP policy with a target of x for schemes of a certain size and then the SPG sets out the mechanism by which councils would achieve that through planning obligations, how that is calculated

ii. maintain privacy policy – statement in LDP policy but then SPG sets out detail on how this is calculated e.g., 21 metres between facing windows.

58. The Deputy Chief Inspector of Planning, Tony Thickett, clarified that SPG cannot be used to set policy – the policy has to already be in the LDP – but it can be used to expand on and supplement the LDP policy and provide detail on how to implement the policy.

59. The Welsh Government's LDP Development Manual states the following:
    - SPG must be consistent with national policy and the local development plan
    - SPG cannot be linked to national policy alone – there must be an LDP policy or policy criterion that provides the development plan 'hook', whilst the reasoned justification provides clarification of the related national policy
    - SPG must derive from a LDP policy or, in the case of a master plan/ development brief, from a site allocation.

Use of SPG

60. Dr Harris, Senior Lecturer in Planning, Cardiff University, explained that SPG can be used for a range of different matters - masterplans, design frameworks, developer contributions etc.

61. In their written submission, the Design Commission for Wales highlighted that significant site allocations would benefit from site-specific development brief SPG with overt reference to placemaking, stressing that placemaking considerations should be integrated into all relevant SPG. They also emphasised that SPG should be as place-specific as possible, as there is little value in repeating general principles about a topic, and that there needs to be specific application to the location.

Scope of SPG

62. The Deputy Chief Inspector of Planning, Tony Thickett, told the Inquiry that whilst it is important the LDP policy says what the aim is and includes thresholds or numbers or percentages, the SPG needs to say how that is worked out e.g., affordable housing policy will contain number or percentage, the SPG explains how this is worked out, what is included/ excluded, and details exceptions, He continued that this could be the same for a Houses in Multiple Occupation SPG – it explains to developers what the tipping

points are and the detailed way the policy is implemented – it explains how the council makes the decision of whether an application tips the balance re the threshold.

63. The Welsh Government's LDP development manual states that SPG should not be used to determine the appropriate type, scale, and level of development for particular sites. Rather, SPG have a key role in interpreting and expanding on generic policies in the LPD and can:
    - Provide important guidance to expand on topic-based policy to assist the implementation of the LDP (e.g., design, landscape, green infrastructure, heritage, conservation, Houses in Multiple Occupation (HMOs), renewable energy)
    - Cover detail and numerical guidelines/thresholds where they may change, to avoid the LDP becoming quickly outdated and to assist flexibility (e.g., car parking standards)
    - Provide additional detailed guidance on the type of development expected in an area allocated for development in the LDP. This could take the form of a development brief or a more detailed master plan.

Status of SPG

64. The Vice-Chair Planning Officers Society Wales, Tom Evans, explained that SPG needs to derive from and be consistent with a local policy in the LDP that has been adopted – this provides the 'hook' for the SPG. He added that councils need to bear this in mind when deciding where they should be developing SPG. He continued that the LDP is the primary basis on which planning application decisions are made, with SPG being a material consideration only.

65. The Welsh Government's LDP development manual is also clear that the LDP should not delegate the criteria for decisions on planning applications to SPG, which should only contain advice and guidance.

66. Dr Harris, Senior Lecturer in Planning, Cardiff University, explained that the LDP has a certain status, and that SPG will never get to the same status due to the way the current legislation has been drafted. He highlighted that one of the terms used in the SPG Inquiry terms of reference, '*enforce'*, is not strictly accurate – they are not 'enforceable' as it is not in their nature to be 'enforced' but councils can add weight to an SPG.

67. The Welsh Government's LDP development manual sets out that SPG should be formally approved by the local planning authority so that proper weight can be given to it by Inspectors when determining appeals. However, SPG should not be approved formally until after the Inspector's report is received on the LDP and the policy approach has been confirmed by resolution to adopt the plan by the local planning authority. Any documents approved as SPG should accord with the accepted procedures for SPG (i.e., consultation, revision, and approval).

68. Members concluded that:
    i. SPG derive from LDP policy, which provides the 'hook'.
    ii. SPG supplements the policy in the LDP to help guide decision makers and developers on how they might achieve the aim of the policy, how the policy is going to be interpreted, and how to implement the policy.
    iii. SPG set out the mechanism by which to achieve LDP policy - how thresholds, numbers and percentages are calculated, what is included/ excluded – explaining to developers what the tipping points are, and the detailed way policy is implemented. SPG provides detail on exceptions stated in LDP policy.
    iv. SPG will never get to the same status as LDP unless the legislation is changed.
    v. SPG are a material consideration but are not 'enforceable' as not in their nature to be 'enforced'.
    vi. SPG must go through the accepted procedures - consultation, revision, and approval.
    vii. SPG should be formally approved by the local planning authority, once the LDP has been through examination and the policy approach is confirmed by resolution to adopt the LDP.

Adding weight to SPG

69. The Inquiry asked witnesses for their views on the various factors that add weight to SPG, in addition to the factors contained in the LDP, so the factors that are only contained in SPG. Witnesses identified the following factors: style, language, evidence, impact, exceptions, consultation process, and examination process.

Style

70. Julia Barrell, Vice-Chair - Cardiff Civic Society, stated Cardiff Council needs to make SPG shorter and snappier, with clear examples of what the Council is expecting.

71. In their written submission, the Design Council for Wales highlighted that a clear summary of the key points of the guidance at the start of the document will make it more accessible and user friendly.

Language

72. Representatives from Cardiff Civic Society commented on the use of language in Cardiff Council's current SPG:

'Need to tighten the use of language in SPG, being explicit in the SPG which LDP policy, paragraph, the SPG is expanding upon and looking to avoid terms such as 'will seek' and other caveats. If the language is not precise enough, it is easier for developers to argue against the intents of the SPG, for example on grounds of viability. Tighter language will make an SPG easier to defend and get Planning Inspectors support on appeals. I recognise that any large planning application will have some areas that are in breach of an LDP – it is a value judgement which breaches are tolerated, and tighter language will help clarity on this' Lyn Eynon

'language is important, the Green Infrastructure SPG contains lots of 'hedging' terms, such as 'may/ should/ seek to' etc. This does not help people understand what they should be doing and what the Council is expecting – need to be clear and unambiguous.' Julia Barrell

73. Clare James, Cardiff Future Wellbeing Alliance, also made this point:

'Need to ensure the language used in the LDP is not vague – need to avoid terms such as 'may' 'should' 'like' – the average person sees it as language to enable developers to get around things – need clear language in LDP e.g., measures – and then the 'how' in the SPG.'

74. Members heard from the Vice Chair Planning Officers Society Wales, Tom Evans, that, whilst SPG language is less definitive, this is going to be the case as cannot introduce new policy in SPG. Dr Harris, Senior Lecturer in Planning Cardiff University explained to

Members that some councils use phrases such as '*seek*' '*sought*' whereas others phrase it more robustly as 'e*xpectations of local authority'* and '*basis for negotiations',* the latter point being key as SPG has to be used flexibly and needs flexibility built in. So, whilst phrases such as '*seek*' are accurate, as councils cannot insist, they do not give the right message; **language needs to be strengthened and have positive messages whilst recognising need to negotiate and explore with developers**. Dr Harris cited Monmouthshire Council's Green Infrastructure SPG as a good example of this.

75. Members highlighted the importance of language in the Highway Code – '*could*' meaning advisory and *'should'* meaning legally obliged to – and asked whether it is the same in planning legislation re weight of words. Dr Harris explained there is nothing in primary legislation re SPG because it is non-statutory, but that councils do not need to emphasise this in SPG. Some local authorities state in their SPG '*this is a non-statutory document'* – whilst that is true, there is no reason to emphasise this.

76. Clare James, Cardiff Future Wellbeing Alliance, added that there is a need for an iterative process to inform the development of the LDP and SPG, which would be more about engagement than consultation, to work together to avoid vague terms, to get it right in the first place.

Evidence

77. The Deputy Chief Inspector of Planning, Tony Thickett, informed the Inquiry that the guidance on producing SPG is that this **must be evidence based** - when you produce SPG it should be as equally evidenced based as you would for an LDP going before a Planning Inspector. He continued that the Council must have the evidence to show the impact that the SPG is seeking to avoid, to support the harm claimed by the council if this is not avoided, and to support the thresholds, numbers, and/or percentages chosen.

'The key is to have evidence to show the impact that the policy is seeking to avoid – what is the impact of having more HMOs than the policy states is acceptable, the tipping point, where is the evidence to support this impact? It is essential to evidence thresholds, numbers, percentages, impact. So, the detailed way of how going to implement the policy sits in the SPG, whereas the overarching policy objective sits in the LDP policy. Whatever thresholds choose, need to evidence.'

Tony Thickett

Impact

78. The Vice Chair Planning Officers Society Wales, Tom Evans, explained that Swansea Council's SPG **highlight the reason *why* something is not acceptable**, they explain the implications, for example the impact on wellbeing, on useable space etc. This means that planning inspectors can see that the guidance is clear on what is required of the developer and the impact if this is not followed. He explained that this provides a reason for planning inspectors to concur with the Council – the planning inspectors need a reason – it is not sufficient for them to say the application does not comply with an aspect of the guidance – they need to know the implications and that the implications are unacceptable, which is why Swansea Council set out the impact, for example the impact on wellbeing etc.

Exceptions in SPG

79. The Inquiry received a written submission from Cardiff Civic Society that stated:

'First and foremost, Cardiff Council needs to abide by the edicts set out in its documents. The material is worthless if the council simply ignores its own policies at every opportunity.'

80. At the meeting with Members, Nerys Lloyd-Pierce, Chair Cardiff Civic Society added to the above, stating the Council needs to abide by its SPG and that there is no point having 400-page documents if the Council does not stick to what is in it.

81. Members explored this issue with other witnesses. The Chief Inspector of Planning, Victoria Robinson, clarified that **the planning system is not designed to be prescriptive, and councils should not try to be prescriptive in the LDP and SPG as they could end up tying their own hands**. She continued that councils needs to be clear what their goal is, what they are trying to achieve through policy and have evidence to support why saying that. Then, as long as this is consistent with national policy, this should work in terms of shaping development. She added that

'the planning system is not designed to have 'thou shalt not ever' policies, and certainly cannot state these in SPG or LDP, this is my number one advice to scrutiny - there has to be shades of grey – need the LDP and SPG to provide clear advice on what developers need to do and how the council will take into account different factors that affect a particular development.'

82. The Deputy Chief Inspector of Planning, Tony Thickett, explained that SPG is only guidance: it is not meant to be applied slavishly, it needs to have some flexibility. He gave the following example:
'if SPG specifies 21 metres between facing windows, and developer comes forward with proposal that is only 19 metres apart, this does not mean have to refuse it automatically – it depends on the circumstances – it could be that in this particular case although there is only 19 metres it does not cause harm as it is at an angle – it's not a black and white tick box – need to apply judgement.'

83. The Vice Chair Planning Officers Society Wales, Tom Evans, stated there are going to be cases where it is in the interests of the Council to divert from some of the SPG principles or requirements, in the wider interest of achieving the development e.g., if 2 out of 100 houses can't see street trees, as required by Swansea's Street Trees SPG, but they have distant views of rolling hills, then the Council would not insist on this – the Council has to take a reasoned approach to details in the SPG. He stressed the Council must be reasonable in how it applies SPG – the main issues to think about are being clear what wanting to achieve/ not allow/ impacts to manage and then think about whose interests are served by applying SPG, so, if perfectly acceptable or even preferred alternative, a council may decide not to stick rigidly to SPG – need to make sensible decision based on entirety of scheme.

84. The Vice Chair Planning Officers Society Wales, Tom Evans, added that Swansea Council's HMO and PBSA[9] SPG, December 2019, provides more details on exceptional circumstances, linking this back to the LDP policy, and setting out the sort of circumstances where the council will depart from the principles e.g., long-standing empty property that has been marketed for a significant period of time but without finding anyone to live there, and is in a poor state of repair and the level of investment required means it is not viable for family housing, so if not allowed to use it as HMO it would stay in a poor state of repair and empty to the detriment of the neighbourhood. He continued that the LDP Policy and the SPG set out the exceptional circumstances and so give decision makers clarity and some flexibility in specific circumstances to enable them to

[9] HMO = Houses in Multiple Occupation, PBSA = purpose-built student accommodation

divert from over-arching principles when in over-riding interest e.g., long-standing empty property. He also provided another example re HMOs and small streets and how the SPG sets out how small streets would be disproportionately affected by the overall 25% threshold and why an additional level of protection is provided to small streets, the evidence amassed to support this, the way in which this will be approached, and the calculations used to arrive at a decision.

85. The Chair of Cardiff Civic Society, Nerys Lloyd-Pierce asked Tom Evans whether, in his experience, developers took advantage of this flexibility – that they used it to get out of the SPG? Tom Evans responded that Swansea's experience so far was that this did not happen to any great deal**: developers need to evidence and explain why, in that individual circumstance, the exception applies and how the concerns the Council has identified *(the impacts if SPG not implemented)* are outweighed by the individual circumstances**. He stressed that that is the test – **the only reason why a decision maker disapplies the SPG is if it is in the wider interests of development and the area**. He continued that there will always be circumstances where this happen, and that this is particularly the case re thresholds and proportions.

86. In their written submission, the Design Council for Wales stated there is a need to ensure SPG is appropriate and has value for designers, clients, applicants, and decision makers, highlighting that this will require analysis of specific locations. They added that there should be sufficient flexibility in the SPG to ensure each application can be considered by suitably skilled officers to enable appropriate innovative and creative design.

87. The Deputy Chief Inspector of Planning, Tony Thickett, reiterated the point that planning is not black or white, there is an element of subjective judgement and there will be exceptions, so there is a need for flexibility e.g. might have target for affordable housing but might need to reduce it to meet brownfield site needs, transport needs, or education needs; it depends on the priorities for the site – there is not a bottomless pit of money from developer contributions, so it is up to the Council what they put the money towards.

Consultation re SPG

88. The Vice Chair Planning Officers Society Wales, Tom Evans, explained that councils have to show that they have gone through a process of consultation and have to set out how they have responded, and whether they have made changes to the document in light of representation; this shows SPG is a reasoned document. He stressed that it is not always the case that every representation made leads to a change in a document as sometimes there are good reasons for not doing so but councils need to show all representations have been properly assessed and the reasons why changes cannot be made.

89. Cardiff Civic Society stated that it is important for Cardiff Council to demonstrate and evidence that it is giving due consideration to stakeholders' comments, that it is taking them seriously. Nerys Lloyd-Pierce, Chair Cardiff Civic Society, stated that the current LDP had 1,500 recommended changes via consultation but, apart from a couple of tiny points, none of them were taken on board. Julia Barrell, Vice-Chair, Cardiff Civic Society, added that lots of examples and suggestions were provided during the consultation for the Green Infrastructure SPG and none came to fruition.

90. Dr Harris, Senior Lecturer in Planning, Cardiff University, told the Inquiry that he could see on Cardiff Council's website that Cardiff's SPG have been consulted on, and evidence of this consultation.

91. Clare James and Terry Howe, Cardiff Future Wellbeing Alliance, put forward the view that there is limited awareness and understanding amongst most people of what an LDP or SPG are: consultation on SPG, and the LDP, is an opportunity to build knowledge and trust in the planning system, provided there is iterative engagement:

> *'The LDP consultation documents are 'dry documents' that do not engage – a lot of people do not know what an LDP or SPG are or why they matter – this is understandable as it is a complex area with lots of documents to wade through.'*
>
> *Terry Howe*

'The consultation process needs to be iterative; it needs to be a conversation to build trust, it needs to educate and explain and inform citizens and then seek their views again once they know more about the LDP process and planning system overall and

context that local authorities have to work within. It is critical that citizens are given the opportunity to understand the whole process'

Clare James

92. In addition, they stressed the need for trust that the Council is working in the common good not developers' interests. Members discussed this with Clare and Terry and raised the issue that Members sometimes face, that something is in the greater good but may affect individuals e.g., bus/ cycle lanes. Clare and Terry acknowledged the tensions between these positions, responding that as they come from the environmental perspective, they know bus/ cycle lanes and inner-city flats are needed but are aware of others' views. They stressed that they would not want to see green belt development or see this as good for children/families, but recognised trade-off is sometimes needed, particularly re transport improvements.

93. In their written submission, the Design Commission for Wales stated that there should be genuine, early, and iterative engagement with stakeholders and local people to develop SPG.

94. Members sought the views of the Planning Inspectors re consulting on SPG; Members were concerned that it is hard enough to consult effectively on the LDP let alone on SPG, which does not have the same status, which may lead to stakeholders feeling it is not worthwhile responding to SPG consultation. The Deputy Chief Planning Officer, Tony Thickett, stated that it is important to get the LDP policy right and to consult on this and get that consultation right – the SPG then interprets and assists in implementation of the policy, so **the LDP policy consultation focuses on consulting on the principles underpinning the policy whereas the SPG consultation focuses on the 'how' of implementing the policy, not the principle**.

95. The Welsh Government's LDP development manual states that SPG that have been subject to consultation will carry more weight and that approved SPG should include, or reference, a statement of consultation and any changes made as a result of this consultation. It also sets out that the LDP Delivery Agreement should establish what SPG will be prepared (or revised) and by when, and the timetable indicating when SPG would be issued for consultation and the length of that consultation. It should also

identify the means of community involvement suitable for different types of SPG. Commitments to involvement and consultation must be followed if the SPG is to be of value. SPG will carry little or no weight unless it is produced in accordance with a Community Involvement Scheme and is subject to public consultation and approved by Council resolution.

96. Dr Harris, Senior Lecturer in Planning, Cardiff University highlighted there is an opportunity where there are critical hooks in LDP to consult on these critical SPG in parallel with LDP. The Inspector reviewing the LDP will be able to comment and reconsider how well LDP is written and presented at the same time as seeing what it is that will be in the SPG, which will help to make the SPG more robust.

'If there are some really important SPG - maybe those that cover crucial areas for guiding development, such as developer contributions, transport network impacts etc. – then there is an opportunity to consult on SPG in parallel to LDP, rather than subsequently as is often the case. So, if there are critical hooks in LDP, then consult on these critical SPG in parallel with LDP'

Dr Harris

97. Dr Harris continued that running LDP and SPG consultation in parallel is resource intensive, given the amount of detailed preparation required to appropriately draft SPG, but it might help to enhance the SPG because the process to develop the SPG – consulting, revising, and approving by Council resolution - would be in close parallel to the LDP.

98. Dr Harris advised to only do this on SPG which are critical, given the resource implications, where it is really crucial to get the hook right in the LDP. Then, when the Inspector is reviewing the LDP, they are not only commenting on the plan in light that SPG will follow, but they are also commenting and reconsidering how well the LDP is written and presented at the same time as seeing what it is that will be in the SPG. He concluded that this is one example of how councils might make some of their SPG documents more robust, by running consultation in parallel with LDP.

99. Members sought the view of the Planning Inspectors on this proposal. The Deputy Chief Inspector, Tony Thickett, stated that he could see a lot of advantages to doing this and

no harms arising but that there would be a capacity issue for planning officers, as it is a lot of work to prepare LDP and SPG and they are two different things. He highlighted that it starts to make it very complicated and a big job when you also have the LDP to do but that there are no reasons why you cannot do this.

100. The Welsh Government's LDP development manual states that:
'Where SPG relates to, and would assist the understanding of the implications of the plan or a key policy, it should ideally be prepared and consulted on in parallel with the LDP.'

101. Members noted that Cardiff Council's LDP Review (March 2021) states
'*A review of the existing SPG including ones recently amended and adopted will be undertaken as part of the LDP Revision process.'*

Point 3.85

102. Members further noted the Replacement LDP Delivery Agreement, agreed with Welsh Government in January 2021, states the need for any new or revised SPG (related to existing LDP policies) will be considered '*on its merits having regard to the need for new guidance together with the adequacy of the existing policy framework'* as set out in the LDP and national guidance and continues, '*In such cases, the SPG will be subject to its own consultation process.*'

103. The Delivery Agreement also acknowledges that consultation with stakeholders as the Replacement LDP is prepared may reveal the need for new SPG to be produced that directly relates to the Replacement LDP. It states '*In such cases, it is intended that public consultation on the SPG would be undertaken in parallel with wider replacement LDP engagement. Stakeholders will be kept informed of any such consultations.*' SPG would need to be included in the Replacement LDP Deposit of proposals stage, scheduled to take place December 2022 – November 2023. SPG would need to be included in the documents published as part of the statutory 8-week consultation period.

Examination process

104. The Deputy Chief Inspector, Tony Thickett, explained that, in Wales, Inspectors do not examine SPG as these are outside their remit.

105. Dr Harris, Senior Lecturer in Planning, Cardiff University, highlighted that England used Supplementary Planning Documents (their equivalent to SPG) and had a process where, if the local authority wanted them to have enhanced weight, they could take them as a Local Plan document - part of their Local Plans (their equivalent to LDP) – so these SPDs were examined, with a formalised and statutory process. This gives the SDP added weight. Dr Harris explained there is no similar provision within the Welsh planning system. The English approach takes more resource as more formality as a statutory process, whereas in Wales SPG are easy and quick to prepare, consult on and resolve to approve by Council, albeit that they lack statutory status.

106. Dr Harris, Senior Lecturer in Planning, Cardiff University, stated that it may be possible for councils in Wales to learn from England re the above, by setting up an independent review of SPG, or some of them – those that Councils want to 'bite' a little bit more. This would not be a statutory review but an independent review of SPG or some of them, that may add weight. He explained that, at the moment, Cardiff Council develops SPG, consults on them, reflects on suggested changes, amends SPG accordingly if it wishes to and presents them to Council for approval – it may be that a semi-independent review would enhance the weight, albeit that only incrementally adding weight. He stressed that it is not definite that an independent review would add weight in the planning inspectors view, but it could. Dr Harris did not offer an example of where this process was trialled successfully.

How to make SPG strong enough to win an appeal

107. Members highlighted that, ultimately, a Council will only know if SPG is a good document at the point that it is challenged by an appeal and upheld by the Planning Inspector – it may look good and contain useful information but is it effective? Is it open to interpretation? They sought the views of the Planning Inspectors on what they think is needed for SPG to be strong enough in appeals.

108. The Deputy Chief Inspector of Planning, Tony Thickett, explained the weight a Planning Inspector gives to an SPG depends on how it fits with the LDP policy and the process it has been through. Planning Inspectors will give considerable weight to SPG if i) it is clearly linked to an LDP policy ii) it has been subject to public consultation and iii) it has

been approved by Council as supplementary planning guidance. Ahead of all of these is the need for the SPG to comply with national planning policy.

109. Tony Thickett reiterated that the LDP is the starting point – the planning authority and planning inspectors must determine the application in accordance with the LDP until and unless material consideration indicates otherwise - if the LDP policy is vague, that is still the starting point. He emphasised that a council cannot bring in SPG to amend the policy or fill the gap. However, they could do a minor review of LDP if they were finding that one policy was not delivering what the council had intended.

110. The Chief Inspector of Planning, Victoria Robinson, highlighted local authorities can refer to Future Wales, which has development plan status, in their SPG and that she would encourage councils to do this; whilst a lot of the policies in Future Wales are high level, because it is a national plan, they are still useful. For example, with regard to retail centres and changing dynamics about types of uses, Future Wales talks about town centre first and the flexibility that town centres should be looking at. She added that Planning Policy Wales has been updated as well regarding retail – stating that this is an area that has moved on in quality terms since Cardiff's last LDP was adopted. She reiterated the point that SPG carries more weight the more consistent it is not only with LDP but national planning policy as well and that is where Future Wales can help move things forward a bit more.

111. Dr Harris, Senior Lecturer in Planning, Cardiff University stated that, in his view, a lot of what Cardiff Council is doing re SPG is not so different to what other councils are doing in England and Wales, based on his review. Cardiff's SPG have been consulted on and you can see evidence of this consultation and they have been approved by Council resolution. So, the Council's planning department is doing most of the things it can do to give strength and weight to SPG. He emphasised this is a separate point to the effectiveness of the Council's LDP policy hooks.

112. The Vice-Chair Planning Officers Society Wales, Tom Evans, offered to share examples of appeal decisions relating to HMO applications that show how Swansea Council's new LDP HMO policy and HMO and PBSA SPG has been used to manage HMO issues in Swansea.

CASE STUDY - Swansea Council – Use of LDP policy and SPG in Appeal Decisions re HMO applications

Tom Evans, Vice- Chair Planning Officers Society Wales and Placemaking and Strategic Planning Manager, Swansea Council, shared four appeals decisions that illustrate how inspectors have used LDP policy and related SPG to underpin decisions to dismiss planning appeals.

The inspectors' decision notices cite the relevant LDP HMO policy and the HMO PBSA SPG[10] and focus on the use of thresholds, including within and outside HMO management areas and in small streets, the evidence basis re thresholds, the evidence basis re harm and the impact of the proposal on local community and amenities, and that there are flexibilities and exceptions written into the LDP and SPG which these cases do not meet. This demonstrates the importance of including these aspects in the LDP policies and SPG.

The four appeals decisions are:

- 5 Kilvey Terrace, St Thomas, Swansea, SA1 8BA – Appeal Ref: APP/B6855/A/19/3243984

Th appeal decision states that the SPG has been subject to public consultation and is therefore an important material consideration. It cites the LDP policy threshold and the SPG threshold calculation methodology. It cites the LDP policy exceptional circumstances and the SPG detail on this. It cites the LDP policy and SPG objectives to foster balanced and cohesive communities and to avoid adverse consequences for the character and amenity of the area. It dismisses the appeal for these reasons, and for the reason that the application does not meet the more general requirement of LDP Placemaking and Place Management policy that development should enhance the quality of places and accord with relevant placemaking principles.

- 38 St James Crescent, Uplands, Swansea, SA1 6DR - Appeal Ref: APP/B6855/A/20/3252707

The appeal decision cites the LDP Policy, stating the proposed development would conflict with this. It also states the proposed development would run counter to the general thrust of the advice contained within the SPG.

- 17 Oaklands Terrace, Mount Pleasant, Swansea, SA1 6JJ – Appeal Ref: APP/B6855/A/20/3265453

The appeal decision cites the LDP Policy threshold for HMO management areas and the LDP Policy re small streets, including the reasoning for a different approach for small streets and that the SPG recognises that a judgement still needs to be made even if the threshold ratio is exceeded, and cites one of the worked examples included in the SPG to illustrate this. The appeal decision states the LDP policy is evidence based, went through examination, and was found to be sound. It also states that the LDP policy and SPG incorporate flexibility via the exceptions criteria. It cites the LDP policy and SPG objectives to foster balanced and cohesive communities.

- 131 Rhondda Street, Mount Pleasant, Swansea, SA1 6EY: Appeal Ref: APP/B6855/A/21/3271767

The appeal decision cites the LDP policy and SPG's recognition that there will be a need for HMOs to meet occupier demand and that future provision needs to avoid overconcentration to the detriment of residential amenity and community balance. It cites the LDP policy thresholds and that the SPG provides detailed advice on this. It cites the LDP policy re HMO management areas. It cites the LDP policy re exceptional circumstances and the flexibility this provides.

[10] Available at: https://www.swansea.gov.uk/hmospg

SUMMARY - How to Ensure Strong SPG:

- Use positive, precise language
- Cite relevant LDP policy and paragraph upfront
- Be clear and unambiguous re what the Council is expecting
- Use positive phraseology, such as '*expectations of local authority'* and '*basis for negotiations'*
- State SPG is a material consideration
- Do not state '*this is a non-statutory document'*
- Provide evidence for thresholds, numbers, percentages, and impact seeking to avoid
- Clearly state and detail the impact the SPG is seeking to avoid
- Detail the implications if this impact is not avoided – the harm caused
- Include flexibility via exceptional circumstances, providing details on these, how they will be approached and how they will be calculated
- Have an iterative engagement and consultation process
- Take the SPG through the approved process
- Formally approve the SPG at Full Council

Publicising SPG

113. Cardiff Future Wellbeing Alliance highlighted the need to increase the publicity for Cardiff Council's SPG, to make them more accessible and help build citizens knowledge about SPG:

'Need to have clarity with SPG – at the moment some of them seem hidden and are hard to find – and build knowledge about SPG – the average citizen would not know what an SPG was.'

Clare James

114. In their written submission, the Design Council for Wales stated that all SPG documents must be available on the Council's website. Cardiff Civic Society also highlighted the need to improve the accessibility of Cardiff Council's SPG by including all SPG on the Council's website in one specific section. In addition, they raised the need to clarify where planned SPG instead morphs into another type of planning tool, such as a Technical Guidance Note, so that it is straightforward for stakeholders to keep track:

'The current LDP states there will be an SPG on Open Space, but this has morphed into a Technical Guidance Note on Open Space forming part of a wider Green Infrastructure SPG. This may or may not be the right way to tackle these issues, but it could be confusing and, indeed, the Indoor Arena developer does not seem aware of this, as they state in their application that there is not an Open Space SPG but do not refer to the TGN on Open Space.'

Lyn Eynon

115. Lyn Eynon, Cardiff Civic Society also raised the need to improve the housekeeping for SPG, by ensuring draft SPG are replaced by the approved SPG and that the status of SPG is clear:

'currently some approved SPG are on the website in their own section, some are only available by finding the relevant report to Council e.g., Green Infrastructure SPG. In addition, it is not very clear on their status - some still have draft on them, with no final version online, such as Green Infrastructure SPG'

Lyn Eynon

116. The Vice-Chair of Planning Officers Society Wales, Tom Evans, confirmed to Members that there needs to be clarity on the status of SPG and where they can be found.

117. Finally, Cardiff Civic Society emphasised the need to ensure that documents are capable of being downloaded onto mobile devices without compromising their usability, that they are 'accessible-friendly.'

Up to date SPG

118. In their written contribution, Cardiff Civic Society stated that several of Cardiff Council's SPG need updating, citing the City Centre Design SPG that dates from 1994. During their meeting with Members, they stated that, in their view, some of the SPG are '*past their sell-by date,'* citing the Dumballs Road Masterplan, which dates back to 2006, as an example.

119. Similarly, in their written submission, the Design Council for Wales, stated that SPG must be kept up to date and that several of the current SPG are old and have outdated policy and place references

120. However, Dr Harris, Senior Lecturer in Planning, Cardiff University, stated that
'Cardiff is doing quite well – it has one or two quite dated SPG – but most followed quickly after the LDP, so not too dated.'

Future Proofing SPG

121. Cardiff Civic Society stressed the need for SPG to address the Climate and Nature emergencies:
'Need to futureproof SPG – climate and nature emergencies are not going away – need to think through what need to achieve from developers 5/10 years ahead'

Julia Barrell

122. Cardiff Future Wellbeing Alliance emphasised the need for the LDP, and therefore SPG, to assist in implementing One Planet Cardiff:
'how One Planet Cardiff fits into the LDP – this is a real opportunity to engage and take One Planet Cardiff seriously in terms of achieving net zero.'

Clare James

New SPG

123. Cardiff Civic Society raised the need for new SPG, such as to conserve historic buildings that mean a lot to local communities but may not be deemed nationally significant and therefore subject to the protections offered by CADW.

'There is a need for new SPG, such as to conserve historic buildings – not just buildings deemed as nationally significant but also locally important historic buildings e.g., the Settlement building in Splott and the Rompney Castle, these mean a lot lo local communities'

Nerys Lloyd Pierce

124. It should be noted that this suggestion must be taken in context with the expert advice that SPGs cannot be used to make new policy or amend policy but only to amplify existing LDP policy. Consideration would need to be given to whether new SPG could build on existing LDP policy or whether they would require new policies in the Replacement Local Development Plan.

Good Practice SPG

125. Cardiff Civic Society advocated Cardiff Council be open to good practice advice from elsewhere, including England.
'Cardiff Council needs to take advice from elsewhere to move forward, need to be more open to accepting good practice advice and follow this. Bristol is similar to Cardiff so why not follow good practice from there?'

Nerys Lloyd Pierce

'whilst there are differences between planning systems in England and Wales, some of the good things developed in England could come to Cardiff and be applicable – in my view it is unlikely to be prohibited – need to look more widely than Wales, at other larger cities, to find examples useful to Cardiff.'

Julia Barrell

126. Members wondered whether the differences between the English and Welsh planning systems, such as definitions, would mean that English good practice would not be relevant or applicable in Wales. They sought the advice of the Deputy Chief Inspector of Planning, Tony Thickett, who responded that:
'you will find good and bad SPG in England that you can learn from – the role of SPG in England is exactly the same as it is in Wales, with development plan the primary document and SPG having the same function in England and Wales. Whilst policies in England and Wales are diverting, the principles and mechanisms of the planning systems are the same, so there is no harm in looking for examples in England.'

127. The Deputy Chief Inspector of Planning, Tony Thickett, also stated that there is not a silver bullet anywhere – in general, the best LDP and SPG are the simplest.

128. Julia Barrell, Vice-Chair, Cardiff Civic Society highlighted the need for Cardiff Council to be clear what it is looking to achieve so that it can identify relevant good practice examples:
'I and others might see these as good practice examples but, from experience, the Council may not as they may not accord with what the Council is looking for, and

therefore it is essential as a first step to be clear what it is that the Council is looking to achieve, what it wants to see.'

Good Practice SPG - examples

129. Throughout the Inquiry, Members asked witnesses to identify examples of SPG used elsewhere that they thought was good practice and to clarify to Members why they believed these to be good practice.

130. Cardiff Civic Society identified Bristol Council's Trees SPG and Cornwall Council's Biodiversity SPG as good practice examples, whilst Cardiff Future Wellbeing Alliance highlighted some English councils have Climate Change SPG that might be worth looking at, including Bristol Council and Woking Council. Dr Harris stated that he had asked colleagues to identify good practice SPG, which led to Monmouthshire Council's Green Infrastructure SPG being cited as good practice.

131. Tom Evans, who attended the Inquiry as the Vice-Chair of the Planning Officers Society Wales and is also the Placemaking and Strategic Planning Manager, Swansea Council, talked Members through two Swansea Council SPG – the Street Trees section of the Placemaking SPG and the Houses in Multiple Occupation and Purpose-Built Student Accommodation SPG. In addition, he forwarded links to two other Swansea Council SPG – Trees, Hedgerows and Woodlands[11], and Biodiversity and Development[12].

132. In addition, at the request of Members, the Scrutiny Officer supporting this Inquiry undertook some internet searches to identify good practice SPG re sustainability, Houses in Multiple Occupation, and accessibility.

Bristol Council's Trees SPG

133. Cardiff Civic Society cited Bristol Council's Trees SPG[13] as good practice, giving the following reasons:

- It makes it clear what the Council wants to see
- It is specific
- It provides examples and photos
- It provides links to further information.

[11] Available at: https://www.swansea.gov.uk/treespg
[12] Available at: https://www.swansea.gov.uk/biodiversityspg
[13] Available at: Supplementary planning documents, practice notes and other planning guidance - bristol.gov.uk

Cornwall Council's Biodiversity SPG

134. Following their meeting with the Inquiry, Julia Barrell, Cardiff Civic Society, highlighted Cornwall Council's Biodiversity SPG[14], stating it is a good example because

- It is clear
- It is easy to understand
- It is defined and detailed
- It explains what the Council is expecting developers to do and show that they have done
- It sets some minimum standards - e.g., minimum number of integrated bird and bat boxes on buildings, minimum number of bee boxes, planting of native trees, etc
- It provides case studies
- It sets out a standard for a minimum 10% biodiversity enhancement[15]

Climate Change SPG

135. Cardiff Future Wellbeing Alliance highlighted some English Councils have Climate Change SPG that might be worth looking at particularly given the need to ensure the LDP supports implementation of the One Planet Cardiff Strategy and assists efforts to tackle the climate and nature emergencies.

136. They identified Bristol Council's Climate Change SPG[16] and Woking Council's Climate Change SPG[17], which has a climate neutral checklist for applicants. Cardiff Future Wellbeing Alliance stressed that it is not aware how these SPG have held up in practice but find the approach taken by these councils interesting, for example Bristol's SPG includes the following: '*developers should aim to exceed the requirements of the current local plan policies. Where development proposals go beyond the standard required by the current LDP the benefits of such an approach can be taken into account as a material consideration when planning applications are decided.'*

Monmouthshire Council's Green Infrastructure SPG

137. Dr Harris, Senior Lecturer in Planning, Cardiff University stated that Monmouthshire Council's Green Infrastructure SPG[18] has been identified to him as good practice SPG as it:

- Starts with a clear statement of which policy in the LDP the SPG hooks into

[14] Available at: https://www.cornwall.gov.uk/media/v1roqk0x/planning-for-biodiversity-and-net-gain-spd-v11.pdf
[15] Members noted that the Environment Act 2021 came into force in England in November 2021 – this requires 10% minimum Net Biodiversity Gain for all new developments which will be on site from November 2023.
[16] Available at: Supplementary planning documents, practice notes and other planning guidance - bristol.gov.uk
[17] Available at: Supplementary Planning Documents and Guidance - Woking 2027
[18] Available at: Adopted SPG - Monmouthshire

- States that the SPG supplements the LDP policy
- States that the SPG is a material consideration
- Uses the above to explain why people should pay attention to it
- Uses a positive tone that is sharp and focused
- Uses robust phraseology including '*expectations of local authority'*
- Includes the phrase '*basis for negotiations,'* thus demonstrating that the flexibility is built in and that there is a need to negotiate and explore with developers.

Swansea Council's Placemaking SPG – Street Trees

138. Tom Evans, Vice-Chair of the Planning Officers Society Wales and Placemaking and Strategic Planning Manager, Swansea Council, cited Swansea Council's '*Placemaking Guidance for Residential Development October 2021'*[19] as a good example of how an SPG provides details of how to implement LDP policy, to ensure the aim of the policy is realised.

139. He focused on the LDP policy on Street Trees as an example, which sets out the need for street trees to be incorporated into developments, meaning a decision to refuse a proposal can be made on the basis that it does not include street trees. However, what if developers put one or two street trees in a major spine road serving residential area – they have ticked the box of the LDP policy, but has it gone far enough? Tom explained that this is where SPG comes into play as it sets the context by referring to LDP policy, and provides more details, with examples and illustrations of various scenarios, thus augmenting concepts set out in policy. The LDP contains detailed policy and the Placemaking SPG builds on this and illustrates it.

140. The SPG provides details on how the Council expects street trees to be incorporated into developments. It provides illustrations of various scenarios, such as how to integrate street trees via planted verges, buildouts, into carriageway, and how to integrate trees on different types of streets – spine streets and major carriageways, lanes, and mews etc. It provides details re direct and oblique views of trees. It explains how to resolve SUDs impact and conflicts between these and street trees. The SPG therefore ensures a developer meets the aims of the LDP policy and avoids a 'tick box' approach.

[19] Available at: https://www.swansea.gov.uk/placemakingspg

141. Tom Evans explained the Council has to take a reasoned approach to details in the SPG and must be reasonable in how it applies the SPG, giving as an example that if 2 out of 100 houses cannot see street trees, as required by the Placemaking SPG, but they have distant views of rolling hills, then the Council would not insist on these street trees. He emphasised the main issues to think about are being clear what wanting to achieve/ not allow/ impacts to manage, and then think about whose interests are served by applying SPG, so, if perfectly acceptable or even preferred alternative, the Council may decide not to stick rigidly to SPG – need to make sensible decision based on entirety of scheme; there are going to be cases where it is in the interests of the Council to divert from some of the SPG principles or requirements, in the wider interest of achieving the development.

142. Therefore, Swansea Council's Placemaking SPG provides details augmenting concepts set out in LDP policy, where the LDP policy sets out requirements and SPG builds on this and provides detail. This provides detail to planning applicants and ensure the LDP policy is implemented in the way the Council wishes.

Swansea Council's Houses in Multiple Occupation and Purpose-Built Student Accommodation SPG

143. Tom Evans, Vice-Chair of the Planning Officers Society Wales and Placemaking and Strategic Planning Manager, Swansea Council, cited Swansea Council's Houses in Multiple Occupation (HMO) and Purpose-Built Student Accommodation SPG[20], as good practice, highlighting how it, coupled with a strengthened LDP policy, has meant the Council is now winning appeals on HMOs, enabling it to manage HMOs more effectively – see page 46 of this report for more details.

144. Having experienced problems with their HMO policy not being upheld on appeal, Swansea Council has strengthened the new LDP policy on HMOs, rather than simply strengthen the SPG, as set out at page 30 of this report.

145. Tom Evans explained that the SPG amplifies the LDP policy providing details on:
    - the reasons why something is not acceptable
    - the implications, for example the impact on wellbeing, or on useable space

[20] Available at: https://www.swansea.gov.uk/hmospg

- exceptional circumstances - linking this back to the LDP policy, and setting out the sort of circumstances where the Council may depart from the principles e.g., a long-standing empty property that i) has been extensively marketed but cannot find someone to live there, ii) is it in poor state of repair and iii) the level of investment required to bring it to good state of repair means it is not viable for family housing, so would otherwise stay in poor state of repair and empty, to the detriment of the local community
- small streets aspect of the LDP HMO policy - including how small streets would be disproportionately affected by the wider 25% threshold, why additional level of protection is therefore provided to small streets, the evidence amassed to support this, the way in which this will be approached and what sort of calculations will be done to arrive at a decision.

CASE STUDY - Cardiff Council's Houses in Multiple Occupation – LDP Policy and SPG

Members undertaking the Inquiry were aware from their ward work, work on Planning Committee, and from issues raised with them by other Members, that Cardiff Council's existing SPG on HMOs is not achieving its aim and is not being upheld at appeal by Planning Inspectors. Members sought clarification on why this is and what Cardiff Council needs to do to strengthen the SPG.

Tony Thickett, Deputy Chief Inspector of Planning, explained Cardiff Council needs to start by improving its LDP policy on HMOs by:
- clearly stating what the Council's objective is
- clearly stating what it wants for areas with high number of HMO applications
- setting out what is to be gained from protecting from HMOs – what harms will be avoided?
- setting out what harms will result from breaching thresholds
- providing evidence of tangible harms
- tightening definitions.

He advised Cardiff Council to look at the Planning Inspectors' decisions:
- *What are the things they are taking into account when making their decisions?*
- *What are the reasons cited for their decision?*
- *What areas do decisions highlight that the Council needs to improve?*

From his understanding, the majority of decisions are because the applications are in areas where the threshold has already been exceeded and there is nothing in LDP or SPG about the harm arising if that is the case and, therefore, there is nothing for planning inspectors to cite to refuse an appeal.

Tony Thickett stated, in his personal view, the Council may wish to take a street-by-street approach, rather than a ward-wide approach.

Tony Thickett stated, in his personal view, the Council may wish to use tools other than planning policy to achieve its aims – is planning the best tool to achieve what Cardiff Council wants to achieve?

Members reflected that the above can be supplemented by the other aspects identified by this Inquiry for improving LDP and SPG.

Good Practice identified by internet searches

146. Members requested that the Scrutiny Officer supporting this Inquiry undertake some internet searches to identify good practice SPG re sustainability, Houses in Multiple Occupation, and accessibility – the latter as a result of a comment received from a fellow Member that their biggest concern re SPG is that they do not address disability issues and that they would prefer issues like disability to be at the forefront of planning.

147. The following SPG were identified:

a. Public Health Wales – SPG template for Healthy Weight Environments (June 2021)
This provides a blueprint for local authorities to use to develop their own local SPG designed to support local people to maximise their well-being, including achieving a healthy weight.
Microsoft Word - Planning and Enabling Main Resource v8.docx (nhs.wales)

b. **Planning Advisory Service – Access All Areas – Planning for an Inclusive Environment (April 2007)** – includes examples of council SPG that ensure inclusivity and accessibility built in as fundamental in planning applications.
Layout 1 (local.gov.uk)

c. **Bath & NE Somerset Council - SPD Houses in Multiple Occupation (January 2022)**
A recent example of SPD for HMOs that deals with similar issues to Cardiff and includes various criteria for tackling this, including:

- ‘sandwich test’ – HMO will not be allowed if it results in other property being ‘sandwiched’ by HMOs.

Houses in Multiple Occupation (HMO) supplementary planning document (bathnes.gov.uk)

d. Newcastle City Council – Sustainability Statements Planning Process Note (November 2021)
A recent example of planning guidance to help developers ensure their designs address the impacts of climate change and achieve sustainability ambitions.
Newcastle City Council - Sustainability Statements Planning Process Note (November 2021) _0.pdf

OTHER

Other Planning Tools

148. The terms of reference for the Inquiry included Members understanding when to use SPG and when to use other planning tools. Members sought the views of witnesses. Dr Harris, Senior Lecturer in Planning, Cardiff University, explained that Councils can use various planning tools, such as place plans, design guides, Technical Guidance Notes, and issue based SPG, but none of these have greater status that SPG. He continued

> *'Councils can prepare what they like and call it what they like but need to get it approved as SPG for it to have weight'*

Annual Monitoring LDP

149. Councils are required to produce an annual monitoring report that sets out progress in delivering the LDP policy objectives and highlights issues with SPG. The Welsh Government's LDP development manual sets out that the effectiveness of SPG, alongside the policy it supplements, should be evaluated as part of the annual monitoring process and that annual monitoring also has a role to play in identifying the requirement for any new or updated SPG.

150. Cardiff Civic Society stated that, in Cardiff, this process is not satisfactory, as the Annual Monitoring Report (AMR) does not highlight any concerns with SPG, when it is clear that there have been issues with some of the SPG, for example the Houses in Multiple Occupation SPG. Dr Harris, Senior Lecturer in Planning, Cardiff University, also identified that the AMR does not highlight any concerns re SPG – it talks about significant progress in putting in place a suite of SPG, and states that most SPG are working as intended.

151. Members of the Inquiry were aware that the LDP Review, March 2021, identified that 18 SPG have been approved by Council since the adoption of the LDP and that the Review identifies, at point 3.36, '*the issue of sub-divisions/ conversions into HMOs and flats is a matter which is considered to warrant a detailed analysis in response to concerns regarding the cumulative impact of proposals on local communities and amenity considerations of occupiers and neighbours. Whilst additional SPG has been*

prepared, appeal decisions are not always supporting the Council's position, so a review is considered timely.'

152. Members therefore concluded that the Annual Monitoring Report required strengthening, to make it clearer to readers the areas needing actions to address deficiencies, perhaps by highlighting these and including an action plan, with steps to address these deficiencies.

Regional SDP and LDP relationship

153. Members of the Inquiry were interested to understand the relationship between the planned regional Strategic Development Plans (SDP) and local authority LDPs. The Deputy Chief Inspector of Planning, Tony Thickett, explained that, in the future, Wales's planning system will have three tiers – the national tier set out in Future Wales, the regional tier set out in SDPs and then the local tier set out in LDPs. He stated that SDPs apportion growth regionally, and LDPs determine where this growth would be e.g., the SDP would say x number of houses needed and that Cardiff will provide x amount of these, and the LDP would determine where these would be provided.

154. Dr Harris, Senior Lecturer in Planning, Cardiff University, stated that, regarding the relationship between SDPs and LDPs, it was early days, with the setup of Corporate Joint Committees and process of SDPs still to be clarified with no guidance or framework yet. He highlighted that some concerns have been raised regarding resources required re additional layer, with concerns that staff resources in the local authorities in SDP areas may be used to draft SDP and that could lead to a trade-off re producing good SPG, given that there is only so much resource available. He stressed that SDPs themselves may require SPG; this is still to be clarified. He added that it is not yet clear how the LDP nestles within SDP and that this will be an interesting dynamic – some policies might be dealt with at a strategic level – it is yet to be seen how this plays out.

CARDIFF COUNCIL PLANNING OFFICERS VIEWS

155. The task group shared the draft main body of the report and key findings with Cllr De'Ath, Cabinet Member Transport and Strategic Planning, Simon Gilbert, Head of Planning, and Stuart Williams, Group Leader – Policy, Planning, to seek their views on the findings and to give them the opportunity to submit any additional evidence they wished the Inquiry to consider prior to the task group framing recommendations.

156. The task group arranged a meeting with Cllr De'Ath, Simon Gilbert and Stuart Williams; on the day, Cllr De'Ath was unfortunately unable to attend due to another call on his time. However, the task group met with officers to discuss the report, following which officers provided annotated copies of the draft report, containing their comments, suggested amendments to improve the clarity and accuracy of the report, and additional evidence they wished the Inquiry to consider. This included:

- The Development Plan including the National Plan and LDP are the primary bases upon which planning decisions are made.
- The LDP must conform to the National Plan, Planning Policy Wales, Technical Advice Notes and other circulars and statutory instruments
- Producing an LDP is agreed with Welsh Government through the preparation of a Delivery Agreement
- Need to be clear that policies are in the LDP and not in SPG – SPG can provide further technical guidance to support an existing LDP policy.
- LDP has to cover a large amount of policy areas and so cannot provide all the detailed technical information needed to implement LDP policies.
- SPG are approved rather than adopted and should be formally approved at a meeting of Full Council
- SPG often cover technical matters and therefore need to be comprehensive, rather than 'short and snappy', they need to be fit for purpose, clear to the target audience and possibly use plain language. It may be that an SPG has to be lengthy and quite technical.
- SPG provide additional advice and guidance and cannot contain the criteria for deciding planning applications upfront

- SPG can be afforded significant weight when considering development proposals. The weight to be applied to SPG can vary depending on its relevance to the issue, the amount of consultation undertaken, the level of governance in approving the guidance, and other planning factors. Each development proposal has to be considered on its own merits, having regard to all factors – officers will have to consider the 'planning balance' in the public interest.
- There may be merit in identifying where future SPG will be required at an early stage in plan preparation and consulting on this. Work on the evidence base could then be used to inform new SPG quicker following adoption of the Plan. Likewise, existing SPG that remain fit for purpose could be brought forward quicker in early tranches on SPG preparation.
- Consultation is governed by legislation and national guidance
- Consultation listens to a variety of views and sometimes these are contradictory views
- The Council has to take into account all comments received
- Appendices in Cardiff Council's SPG identify consultation responses and the actions/ changes made following consultation. This helps add 'weight' as does the fact the Council consults for a reasonable period, publicises and seeks approval of SPG through Cabinet and Council.
- Cardiff Council has been amplifying community voices, including children and young people, throughout the replacement LDP process.
- The Council has a section on its website for SPGs, including a list of approved SPG, a page for draft SPG for consultation, and a list of related Technical Guidance Notes
- There is recognition of the need for web accessibility and a wide range of user accessibility
- Welsh Government recently started a consultation on SDP preparation.
- There may be a need to consider SPG to address issues such as post pandemic recovery, cost of living crises, homelessness and affordable housing.

APPROACH TAKEN

M1. Members undertook this Inquiry between March – September 2022.

M2. Members invited Cllr De'Ath, Cabinet Member – Transport and Strategic Planning, and planning officers to a meeting, and received evidence from the following internal stakeholders who contributed to the Inquiry:

- Simon Gilbert – Head of Planning
- Stuart Williams – Group Leader – Policy, Planning.

M3. Members also received evidence from the following external stakeholders:

- Cardiff Civic Society
    i. Nerys Lloyd-Pierce - *Chair*
    ii. Julia Barrell – *Vice Chair*
    iii. Lyn Eynon
- Cardiff Future Wellbeing Alliance
    i. Clare James
    ii. Terry Price
- Cardiff University – Dr Neil Harris – *Senior Lecturer, Planning*
- Design Commission for Wales
    i. Carole-Anne Davies – *Chief Executive*
    ii. Jen Heal -
- Planning Environment Decisions Wales
    i. Victoria Robinson – *Chief Planning Inspector*
    ii. Tony Thickett – *Deputy Chief Planning Inspector*
- Planning Officers Society Wales
    i. Tom Evans *(Vice-Chair)*

M4. The Planning Environment Decisions Wales witnesses – Victoria Robinson and Tony Thickett – emphasised that the views they expressed were their own and not those of Welsh Government.

M5. Scrutiny Services emailed a variety of other external stakeholders, including developers and other professionals working in development and their representative bodies, offering them the opportunity to contribute to the Inquiry. Members were particularly keen to understand their perspectives. However, no responses were received from these contacts.

M6. To inform the Inquiry, Members were provided with information detailing the policy context, and good practice examples of other local authorities Supplementary Planning Guidance.

M7. The evidence has been used to identify suitable findings from the Inquiry.

FINANCIAL IMPLICATIONS

The Scrutiny Committee is empowered to enquire, consider, review, and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications.

LEGAL IMPLICATIONS

The Scrutiny Committee is empowered to enquire, consider, review, and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without modification. Any report with recommendations for decision that goes to Cabinet / Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal power of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of

the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

COMMITTEE TERMS OF REFERENCE

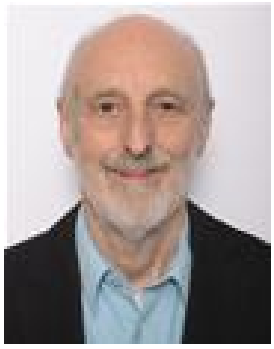
- To scrutinise, measure and actively promote improvement in the Council's performance in the provision of services and compliance with Council policies, aims and objectives in the area of environmental sustainability including:
    - Strategic Planning Policy
    - Sustainability Policy
    - Environmental Health Policy
    - Public Protection Policy
    - Licensing Policy
    - Waste Management
    - Strategic Waste Projects
    - Street Cleansing
    - Cycling and Walking
    - Streetscape
    - Strategic Transportation Partnership
    - South East Wales Transport Alliance
    - Transport Policy and Development
    - Intelligent Transport Solutions
    - Public Transport
    - Parking Management

- To assess the impact of partnerships with and resources and services provided by external organisations including the Welsh Government, joint local government services, Welsh Government Sponsored Public Bodies, and quasi-departmental non-governmental bodies on the effectiveness of Council service delivery.

- To report to an appropriate Cabinet or Council meeting on its findings and to make recommendations on measures, which may enhance Council performance or service delivery in this area.

Environmental Scrutiny Committee Membership

Councillor Owen Jones (Chair)



Councillor Bob Derbyshire

Councillor Jackie Parry

Councillor Jamie Green

Councillor Helen Lloyd Jones

Councillor Bethan Procter

Councillor John Lancaster

Councillor Ashley Wood

Councillor Andrea Gibson

APPENDIX 1

Local Listing

Cardiff Civic Society raised the issue of local listing of buildings, stating the last local listing in Cardiff was in 1997. They are concerned CADW has an anti-urban bias, with Powys have eight times as many listed buildings as Cardiff.

Inquiry Members explored local listing with witnesses, who clarified that:

- CADW listing system is good but leaves a serious gap as there are numerous examples of buildings that are important to local communities, but which do not meet CADW's architectural heritage and merit bar
- Local listing is a legacy issue from the 1990's before the system changed – most local authorities do not add to them – they date back to Grade 1,2 and 3 listings, where local lists were Grade 3
- Local listing is an additional consideration, but it lacks statutory weight so limited what designation as a local listed building would add.
- Local listing offers no additional statutory protections. A planning officer or planning decision maker or planning inspector would have to actively consider the local listing, so it is not true to say it does not add anything but as it offers no statutory protection, it is a very marginal consideration
- Article 4 directives are cumbersome and bring financial and legal implications for local authorities, such as compensation, which is why the tool is there but is quite limited.
- Article 4 directives must be approved by Welsh Government, who are in turn advised by CADW, who would have turned down listing the building in the first place as it did not meet CADW's architectural heritage and merit bar
- There needs to be a discussion between local authorities, Welsh Government, CADW, WLGA and POSW to find mechanisms to safeguard these buildings.

Dr Harris explained, in his view, there is merit in local listing and engaging local communities, working with them to identify buildings that are important to them – such as Roath Park Pub – in terms of special architectural interest, as they could be candidates for future statutory listed buildings. In England, the system is different in that the Localism Act 2011 established tools such as 'assets of community value' and 'community right to bid' – he stated that he is not sure how effective these have been but at least they have tools to protect buildings of interest to communities but might not have special architectural interest.

Scrutiny Services, Cardiff County Council
Room 286, County Hall, Atlantic Wharf, Cardiff CF10 4UW
Email: scrutinyviewpoints@cardiff.gov.uk
© 2022 Cardiff County Council