

# Supplementary Planning Document Garden Land Development



Adopted April 2013

## Harrow Garden Land Development Supplementary Planning Document

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# Introduction 1

Harrow Garden Land Development Supplementary Planning Document

## Introduction

**1.1** This Supplementary Planning Document (SPD) has been prepared to support the implementation of Harrow's Core Strategy (2012) in respect of garden land development. It seeks to clarify, for the benefit of applicants and decision makers, how the Council intends the local presumption against garden development to be applied and to draw a distinction between this type of development and the redevelopment of previously developed land. This SPD does not introduce new policies or requirements but rather is intended to assist the interpretation and application of an existing local policy.

## Purpose and scope



**1.2** Harrow's spatial vision envisages that, over the life of the Core Strategy, gardens will have been protected from inappropriate development. The Core Strategy sets out a spatial strategy to meet and exceed Harrow's housing targets and economic development objectives for the period 2009-2026 through the redevelopment of previously developed sites within the Heart of Harrow<sup>(1)</sup>, within the Borough's town centres and on strategic suburban sites. By planning positively to meet Harrow's objectively assessed growth requirements for the plan period on previously developed land, the Council's vision of a Borough where gardens and other greenfield sites are protected from inappropriate development is one that can be realised.

**1.3** Pursuant to the spatial vision, Policy CS1(B) states that garden development proposals will be resisted. The purpose of the SPD is to secure the proper interpretation of the policy and to ensure that it is effective in preventing new residential development on garden land. It will also help to ensure that the redevelopment of previously developed land, where this is appropriate and consistent in all other respects with Harrow's spatial strategy, is not inadvertently precluded by mis-application of the policy.

## Status of the document

**1.4** Supplementary Planning Documents (SPDs) supplement the policies of Local Plans by amplifying policies with, for example, detailed design guidance, or by providing geographically-specific advice for example in connection with preservation and enhancement conservation areas. They do not form a part of the development plan but they are a material consideration, where their content is relevant, in the determination of planning applications<sup>(2)</sup>.

**1.5** The National Planning Policy Framework (2012) states that SPDs may be used where they can help applicants to make successful applications<sup>(3)</sup> but that the cumulative impact of any local standards contained in the Local Plan and SPD, in addition to national requirements, should not jeopardise the implementation of the Plan<sup>(4)</sup>.

1 The informal name for the Harrow & Wealdstone Intensification Area.

2 See definition at Annex 2 of the NPPF.

3 Paragraph 153 of the NPPF.

4 Paragraph 174 of the NPPF.



**1.6** This SPD will be a material consideration in the determination of planning applications on sites comprising or containing garden land as defined in this SPD. It has been prepared in accordance with the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012, and taking into account Government policy on the role of supplementary planning documents as set out in the NPPF (2012).

### **How the document has been prepared**

**1.7** Following the adoption of Harrow's Core Strategy in February 2012 the Council decided to prepare an SPD on garden land development. The draft SPD was reported to the Council's Cabinet at its meeting on 13th December 2012 and was approved for consultation. Public consultation, in accordance with Harrow's Statement of Community Involvement, was undertaken from 7<sup>th</sup> February until 7<sup>th</sup> March 2013. The outcome of the consultation, and the final version of the SPD incorporating changes in response to representations, was reported to the Council's Cabinet at its meeting on 11<sup>th</sup> April 2013. The Council's Cabinet resolved to adopt the SPD at that meeting.

# Background 2

Harrow Garden Land Development Supplementary Planning Document

### Why is there a presumption against garden land development in Harrow?

**2.1** Harrow's Core Strategy (2012) sets out a clear spatial strategy for the Borough's housing requirement over the plan period to be met on previously-developed land, with particular emphasis on the role of the Harrow & Wealdstone Intensification Area where services and facilities are most readily available, where regeneration benefits would be greatest and where developer contributions to infrastructure improvements could be most readily pooled to deliver the optimum benefits. In short, a spatial strategy for plan-led sustainable growth.

**2.2** Recognising that the Borough's housing requirement is a minimum target, and the need for contingency, the Core Strategy (2012) makes provision for 'windfall' development proposals to come forward on appropriate, previously-developed sites such as house conversions, town centre mixed-use development and employment-led regeneration. A degree of dispersal from such development proposals is inevitable, but manageable. However, additional windfall development on garden land<sup>(5)</sup> would be unacceptably harmful to the strategy of concentration upon identified, previously-developed sites. Because many garden sites have a capacity of less than 10 dwellings, the unfettered dispersal of housing development pressure to garden land throughout the Borough would also risk inhibiting the delivery of affordable housing.

**2.3** The presumption against garden land development therefore exists to ensure that the Borough's housing growth is delivered in accordance with the spatial strategy, set out in the Harrow Core Strategy (2012), by preventing incremental residential growth on (greenfield) garden land leading to a harmful degree of dispersal.

### Why has this SPD been prepared?

**2.4** The Core Strategy was adopted on 16<sup>th</sup> February 2012 and represents a 'step change' in Harrow's approach to planning. That change is from an approach which was essentially reactive to one that promotes, manages and co-ordinates sustainable development in the Borough.

**2.5** The presumption against garden land development is a significant new component of planning policy in the Borough and, recognising this, in the first six months since adoption officers have been carefully monitoring the practical application of Policy CS1(B) and the outcome of appeal decisions in which the policy has been tested. As a result of this monitoring the following two issues have been identified:

- a. The need to draw a reasonable distinction between proposals which seek to demolish and redevelop existing dwellings, involving some increase in building footprint on the site, and redevelopment proposals which involve substantial incursions into garden land; and
- b. The need to ensure that the purpose of the garden land development policy is more clearly understood by applicants and decision makers, following some early appeal decisions on the policy which have conflated the presumption against garden land development with site specific issues of character.

**2.6** The publication of this SPD also provides an opportunity to confirm that domestic extensions and outbuildings do not constitute inappropriate development on garden land.

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5 Which, by definition, is not previously-developed land.

## Planning policy context

### National Planning Policy Framework (2012)

**2.7** The NPPF was published on 27<sup>th</sup> March 2012 following public consultation on the draft NPPF between July and October 2011. It provides a streamlined statement of national planning policy<sup>(6)</sup> which replaces the previous collection of planning policy statements and planning policy guidance notes. The NPPF gives effect to the Government's pro-growth agenda by establishing a presumption in favour of sustainable development. Local Plans have a vital role to play by ensuring that they respond positively to opportunities to meet the objectively assessed needs of the area, whilst decision taking must ensure that development proposals which accord with the development plan are approved without delay<sup>(7)</sup>. This approach reflects the Government's continued commitment to a plan-led system where there is an up-to-date, flexible Local Plan in place which plans positively for sustainable growth. The NPPF is equally clear that proposals that conflict with an up-to-date Local Plan should be refused unless other material considerations indicate otherwise.

**2.8** In response to public concern about 'garden grabbing' by developers, the Government instigated changes to the definition of previously developed land in advance of the consultation draft<sup>(8)</sup> and has carried these through to the published NPPF. As a result, private residential gardens are expressly excluded from the definition of previously developed land.

**2.9** Pursuant to the presumption in favour of sustainable development, and the role of Local Plans and decision taking to that end, the NPPF states that planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed<sup>(9)</sup> and recognises that the supply of new homes can sometimes be best achieved through planning for larger-scale development<sup>(10)</sup>. The NPPF goes on to state that:

Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area<sup>(11)</sup>.

**2.10** The NPPF constitutes guidance for decision takers as a material consideration in determining planning applications<sup>(12)</sup>.

### London Plan (2011)

**2.11** The current London Plan was adopted July 2011 and forms part of the development plan for all London boroughs.

**2.12** Policy 3.5 of the London Plan allows boroughs to introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified. Recognising that pressure for new housing can threaten gardens by inappropriate development and that their loss can cause significant local concern, paragraph 3.34 of the reasoned justification to the policy confirms that there are no strategic housing land availability obstacles to local policies which protect gardens from development.

6 Excluding national policy on Traveller sites, which is set out in a separate publication.

7 Paragraph 14 of the NPPF.

8 The definition was previously contained in Planning Policy Statement 3: *Housing*, and was revised to exclude residential gardens in 2010.

9 Paragraph 111.

10 Paragraph 52.

11 Paragraph 53.

12 Paragraph 13.

#### **Harrow Core Strategy (2012)**

**2.13** Harrow's Core Strategy was adopted February 2012 and forms part of the development plan for the Borough.

**2.14** Policy CS1(A) undertakes to manage growth in accordance with the spatial strategy and Policy CS1(B) states that garden development will be resisted. Paragraph 4.5 of the reasoned justification to the policy explains that, in recognition of the local importance of garden land and the propensity of such sites to lead to unmanaged incremental growth, the spatial strategy directs the Borough's development needs to be met on previously developed sites and, therefore, that residential development on garden land will be resisted.

#### **Commentary**

**2.15** The effect of the NPPF and the London Plan is to allow garden land development to be resisted where the case for doing so can be justified locally through the development plan process. The case for doing so in Harrow has already been justified and tested through the preparation and examination of the Core Strategy, and the local presumption against garden land development is now a part of the adopted development plan for the Borough. It should be noted that the consultation draft NPPF was in the public domain prior to the Core Strategy examination in public and therefore informed representations and participation in the examination process. Furthermore, following the close of the examination hearings, an additional specific consultation exercise was carried out on the implications of the NPPF upon the emerging Core Strategy and the results of this consultation were taken into account by the examining Planning Inspector prior to the publication of his report and binding recommendations.

**2.16** Harrow's Core Strategy sets out a proactive spatial strategy to promote sustainable growth in the Borough. It responds positively to major development opportunities in the Heart of Harrow and to the provisions of the London Plan (2011) by directing major residential and economic development to the Harrow & Wealdstone Intensification Area, and provides for the more modest development requirements of the rest of the Borough to be met in town centres and on strategic suburban sites. Overall the plan makes provision for the redevelopment of identified previously developed sites to deliver a minimum of 6,050 new homes and 4,000 jobs over the period 2009-2026, with additional growth and contingency to be enabled through appropriate windfall proposals such as conversions, town centre mixed use schemes and employment-led or heritage-led regeneration. Taken as a whole, these provisions of the Core Strategy are consistent with the NPPF principle of a plan-led presumption in favour of sustainable development. The Core Strategy's presumption against garden land development is entirely consistent with the NPPF's specific provisions relating to the use of previously-developed land, the role of larger-scale development in the delivery of housing growth, and the endorsement provided both in the NPPF and the London Plan for local policies which resist the residential development of gardens.

#### **Sustainability Appraisal/Strategic Environmental Assessment**

**2.17** In accordance with section 19(5) of the Planning and Compulsory Purchase Act 2004 (as amended), sustainability appraisal of the Harrow Core Strategy was carried out at every formal stage of the plan's preparation including the examination in public and the adoption of the plan incorporating the changes made by the examining Planning Inspector. The sustainability appraisal assessed the environmental, social and environmental effects of the plan and incorporates EU directive requirements for strategic environmental assessment of the plan. The Core Strategy includes comprehensive monitoring arrangements to ensure that the effects of the plan's

implementation are identified and that any potentially adverse or unintended consequences can be addressed. A separate Habitats Regulations Assessment of the Core Strategy has also been carried out in accordance with the requirements of EU directives.

**2.18** Sustainability appraisal is not required for supplementary planning documents<sup>(13)</sup> but the Council must still consider whether there is a requirement for strategic environmental assessment and habitats regulations assessment. In the subject instance, this SPD is intended to inform the implementation of an up-to-date policy in a higher-level plan, and that plan has itself been the subject of sustainability appraisal which incorporates the requirements of strategic environmental assessment. The SPD does not introduce new policy or modify the existing garden land development policy of the Core Strategy and, therefore, is unlikely in itself to give rise to significant environmental effects. Similarly, having regard to the role of the SPD and the habitats regulations assessment already carried out in connection with the Core Strategy, neither does the Council consider that the subject SPD is likely to have a significant effect on any European site.

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13 As a result of amendments to section 19(5) of the 2004 Act inserted by section 180(5) of the Planning Act 2008



# Guidance 3

Harrow Garden Land Development Supplementary Planning Document

## Implementing the presumption against garden land development

### What is garden land?

**3.1** For the purposes of implementing Core Strategy Policy CS1 B, garden land means any land within the curtilage of a building the principal use of which is residential. For the avoidance of doubt, this definition includes:

- a. gardens of houses;
- b. gardens of properties converted to flats and purpose-built maisonettes;
- c. communal gardens to blocks of flats;
- d. communal or 'open plan' garden areas serving multiple dwellings;
- e. any land that formed part of a garden but which has been legally and/or physically severed from the donor property(ies); and
- f. land functionally related to a residential garden (or gardens) and used solely to provide residential amenity but not forming the curtilage of the dwellinghouse.



**3.2** The definition also includes any hardstandings, outbuildings and other structures located on the garden land. No distinction is made between front, side and rear gardens.

### What is not garden land?

**3.3** The following types of land will not be treated as garden land:

- a. land within the curtilage of retail parades (such as gardens to maisonettes above shops);
- b. gardens within the curtilage of commercial premises such as offices and public houses;
- c. any land that historically formed part of a garden but which now has an other lawful use and which has not reverted to have a garden use; and
- d. communal parking courts and garage blocks within the curtilage of housing estates and purpose built blocks of flats.

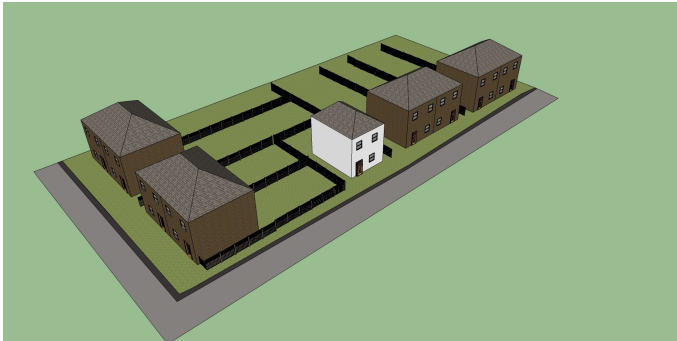
**3.4** The above lists of what is/is not garden land are not intended to be exhaustive and, in some cases, a degree of judgement will be required by decision makers. For example, where comprehensive redevelopment of non-residential premises with a single ancillary dwelling (such as a caretaker's house) is proposed, it is likely that the site as a whole would be considered to be previously developed.

### What is garden land development?

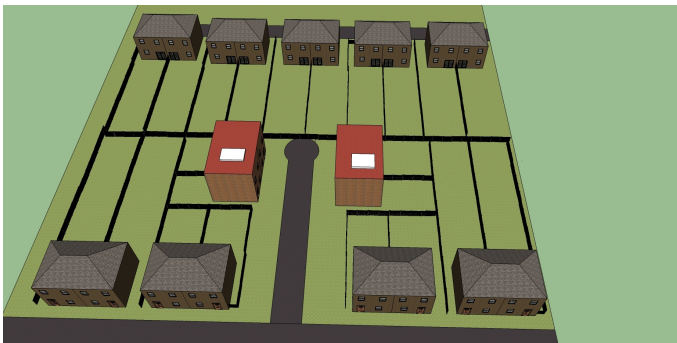
**3.5** For the purposes of implementing Core Strategy Policy CS1 B, garden land development means any development on garden land that results in the formation of one or more new dwellings (houses or flats). Typical examples include:

- a. new dwellings on sites with a secondary road frontage (such as corner properties);
- b. backland development on sites assembled from one or more gardens of existing dwellings; and
- c. the construction or conversion of domestic outbuildings for use as independent dwellings.

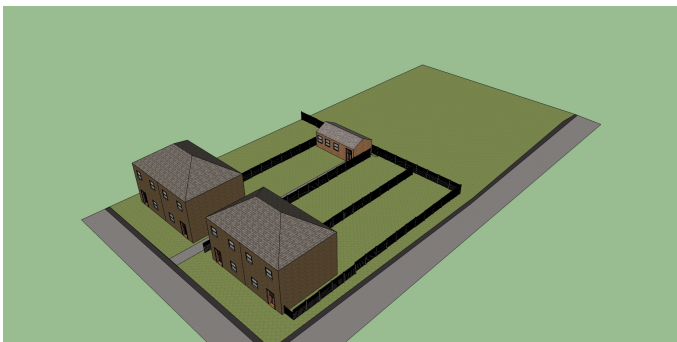
Typical Examples of Garden Land Development



(a) corner site development



(b) backland development



(c) outbuilding dwellings



## What is not garden land development?

**3.6** For the avoidance of doubt, garden land development excludes the following:

- a. householder development, such as extensions, ancillary domestic outbuildings, hardsurfacing, walls and fences, etc;
- b. the redevelopment of an existing dwelling to provide a replacement dwelling on the same building footprint, plus any appropriate enlargement (see below);
- c. the redevelopment of an existing dwelling or group of dwellings to provide multiple dwellings or flats on the same building footprint, plus any appropriate enlargement(s) (see below); and
- d. the conversion of an existing dwelling to flats or multiple dwellings, with or without any appropriate enlargement (see below).

## What are appropriate enlargements?

**3.7** The Council recognises that it would be perverse to limit any proposals for the conversion or redevelopment of an existing dwelling or group of dwellings to the original footprint of those dwellings, but to ignore their appropriate enlargement potential<sup>(14)</sup>. Therefore, to reach a workable position on redevelopment proposals, the Council will allow any enlargement in footprint that is equivalent to whichever is the larger of either:

- i. the footprint of any permitted extensions (excluding outbuildings) that could be exercised for the dwelling(s); **or**
- ii. the footprint of an extension (excluding outbuildings) that would be consistent with Harrow's Residential Design Guide SPD.

**3.8** In the consideration of (i) & (ii) regard will be had to any increases in footprint already exercised as permitted development, or implemented from planning permission(s), in respect of the existing dwelling(s) to be demolished. It must be noted that this exercise is concerned solely with establishing the acceptable increase in footprint of a redevelopment proposal and does not imply that the location or size of an extension, that could be carried out as permitted development, can necessarily be acceptably incorporated into a redevelopment proposal (for example, where there would be an avoidable adverse impact upon neighbouring occupiers). Furthermore, where any increase in footprint under (i) or (ii) is used to justify a proposal, the Council will seek to withdraw as a condition of planning permission<sup>(15)</sup> permitted development tolerances where these could result in further development on garden land.

**3.9** For consistency with this approach to redevelopment proposals, and again to reach a workable position, proposals under (d) above for the conversion of a dwelling which incorporate extensions already carried out, or which involve extensions that are consistent with Harrow's Residential Design Guide SPD, will not be treated as garden land development. However, for the avoidance of doubt, it is re-iterated that the conversion of outbuildings to dwellings does constitute garden land development.

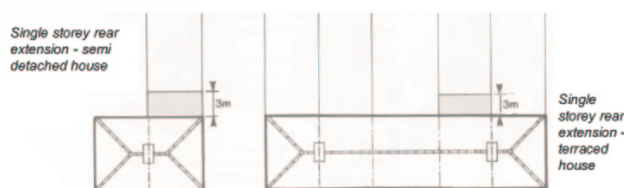
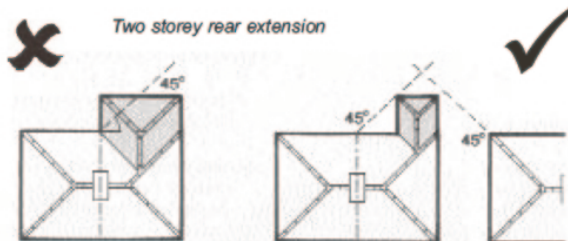
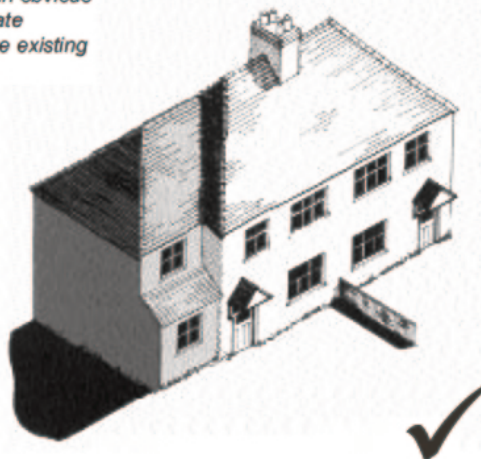
<sup>14</sup> Otherwise, prospective developers will simply exercise any relevant permitted development tolerance or build-out any extensions for which planning permission is granted and then formulate proposals for conversion or redevelopment on the resulting footprint.

<sup>15</sup> Subject to such conditions meeting the tests prescribed at paragraph 206 of the NPPF; namely that they are: necessary, relevant to planning and to the development to be permitted; enforceable, precise; and reasonable in all other respects.



#### Examples of extensions from Harrow Residential Design Guide SPD

*Reflection - an obvious but subordinate addition to the existing building*



#### Exception for gap sites

**3.10** An exception will also be made for 'gap' sites within a built-up street frontage.

**3.11** Gap sites occur only occasionally<sup>(16)</sup> as an anomalous 'missing piece' from an otherwise clearly defined rhythm of buildings (and spaces around buildings) in the streetscene. They are usually obvious vacant plots, of dimensions consistent with those prevailing in the street, within an otherwise built-up street frontage. Consideration of the pattern and character of development surrounding the site will enable a distinction to be drawn between genuine gap sites and spurious

16 Because most 'gap' sites have long since been filled in.

proposals for development on garden land. Side gardens in spacious residential areas, corner sites (see above) and side garages/driveways do not constitute the kind of gaps to which this exception applies.

**3.12** The exception is justified because genuine gap sites are an exceptional occurrence and, consequently, allowing for their appropriate development will not lead to an unacceptable degree of dispersal. It is not the intention of the presumption against garden development to frustrate proposals that would reinforce the positive attributes of Harrow's residential areas by infilling anomalous gap sites. The exception does not negate the need for development on gap sites to comply with other policies, including those relating to the character of the area and the amenity of neighbouring occupiers.

### **Other material considerations**

**3.13** Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. This re-affirms the established principle of the primacy of the development plan in decision making.

**3.14** From time to time other material considerations may justify granting planning permission for a garden land development notwithstanding Policy CS1 of the Core Strategy. To justify such a departure, compelling reasons should be robustly demonstrated by the applicant (i.e. supported by evidence) and those reasons should relate to planning matters of wider, public interest that are unique to the proposal. The Core Strategy makes provision for monitoring of policies against strategic objectives, so that broader planning matters of public interest can be considered and addressed through revisions to policies where necessary. Therefore broader planning matters should not of themselves be used to justify individual departures.

**3.15** Where a grant of planning permission is justified by other material considerations both the application and decision should be treated as a departure from the development plan, and the justification for the departure and any implications for the delivery of Harrow's spatial strategy should be clearly documented in the application report. Given the strategic function of the garden development policy this will be particularly important to ensure that site/proposal specific reasons for the departure do not lead to a broad precedent which undermines the policy. As explained above, broad issues are more properly addressed through the development plan process and the Core Strategy monitoring arrangements allow for this.

### **Other issues concerning garden land development**

**3.16** The presumption against garden land development relates to the propensity of such sites to lead to unmanaged, incremental growth on non previously-developed land, at odds with Harrow's spatial strategy. However garden land developments may also raise other planning issues the consideration of which is not automatically covered by the presumption.

#### **Character**

**3.17** In areas where private residential gardens are an integral part of the established pattern of development, and that pattern contributes positively to the residential amenity or appearance of the locality, a proposal may also be unacceptable by reason of its impact upon the character of the area. Policy CS1 B of the Harrow Core Strategy (2012) resists proposals that would harm



the character of suburban areas, and requires development to respond positively to local context and reinforce the positive attributes of local distinctiveness. Where a proposal would have an unacceptable impact upon local character this will be a separate issue and should not be conflated with the presumption against garden land development.

#### **Biodiversity**

**3.18** Harrow's *Biodiversity Action Plan* (2008) identifies gardens as a locally important wildlife habitat. The protection of gardens will be a *de facto* consequence of the presumption against garden land development, but in some instances a garden site may be of distinguishable biodiversity value, in the opinion of the Council's Biodiversity Officer, such that its development would be unacceptable for this reason. Policy CS1 E of the Harrow Core Strategy (2012) states that, where appropriate, development should seek to promote and enhance biodiversity in accordance with the aims of the Harrow Biodiversity Action Plan and best practice. Where a proposal would have an unacceptable impact upon biodiversity, and that impact could not be mitigated, this again will be a separate issue and should not be conflated with the presumption against garden land development.

#### **Drainage and Flooding**

**3.19** Collectively and individually, private residential gardens often provide valuable permeable surfaces and space for flood water within the urban environment. Harrow's *Strategic Flood Risk Assessment* (2009 & 2011) and Addendum Report (2012) identify the parts of the Borough at medium and high risk of flooding, as well as the functional flood plain. Harrow's *Surface Water Management Plan* (2012) identifies the 'critical drainage areas' within the Borough that are particularly susceptible to surface water flooding. Proposals in fluvial flood zone 3B will be treated as functional floodplain where only water compatible development and essential infrastructure are normally permissible<sup>(17)</sup>. Garden developments in fluvial flood zone 3a are sequentially less preferable and unlikely to pass the exception test, whilst those in critical drainage areas may adversely affect local drainage conditions by reducing permeable surface area. Policy CS1 U of the Harrow Core Strategy (2012) states that development will be managed to achieve an overall reduction in flood risk and increase resilience to flood events. Policy CS1 W undertakes that the requirements for sustainable urban drainage and surface water management (amongst other things) will be set out in development management policies. Where a proposal would have an unacceptable impact upon drainage and flooding, and that impact could not be mitigated, this will be a separate issue and should not be conflated with the presumption against garden land development.

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17 See Table 3 of the *Technical Guidance to the National Planning Policy Framework* (2012).

# Monitoring and Review 4

Harrow Garden Land Development Supplementary Planning Document

### Monitoring and review

**4.1** As noted in Chapter 1, the purpose of the SPD is to secure the proper interpretation of the Core Strategy Policy CS1 B and, in so doing, ensure that it is effective in preventing the inappropriate development of garden land. It will also help to ensure that the redevelopment of previously developed land, where this is appropriate and consistent in all other respects with Harrow's spatial strategy, is not inadvertently precluded by mis-application of the policy.

**4.2** Appendix E of the Core Strategy contains a schedule of specific indicators and targets for monitoring the implementation of the strategy's objectives. That which will be used to monitor the implementation of Policy CS1 B, and therefore this supplementary planning document, is reproduced below:

#### Monitoring Table

Objective Number	Number Indicator	Indicator	Target	Trigger	Action/Contingency
Core Strategy Strategic Objective 1 ( <i>Protect the historical and environmental features that contribute to Harrow's character and distinctiveness as a place to live, work and visit</i> )	LC1	Planning appeals dismissed for inappropriate garden development	100%	More than one appeal allowed for inappropriate garden development over a rolling three year period	Identify reasons and, if necessary, review policies for resisting inappropriate garden development and if necessary revise to strengthen

**4.3** The effectiveness of this SPD in contributing to the proportion of planning appeals dismissed for inappropriate garden development will be kept under review. In particular, the SPD is intended to ensure that, when making decisions on proposals for garden land development, those involved in the decision making process are clear about the purpose and justification for the presumption and do not conflate this with the separate (but still important) issues of local character and amenity. Therefore, the effectiveness of this SPD will be assessed not only in terms of the outcome of appeals but also the quality of decisions. In the event that monitoring of appeal decisions reveals that the SPD is not being effective in this regard, the Council will review its application and if necessary undertake preparation of a revised SPD.