

<p><b>Cabinet</b></p> <p>27 June 2017</p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Corporate Director, Place</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Revised Character Appraisals and Management Guidelines for Driffield Road and Medway conservation areas</b></p>	

<b>Lead Member</b>	<b>Mayor</b>
<b>Originating Officer(s)</b>	Michael Ritchie, Place Shaping Team Leader
<b>Wards affected</b>	Bow East
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	<b>A Great Place to Live</b>

### **Executive Summary**

This report follows from the Overview and Scrutiny Challenge Session on *Planning in Conservation Areas: The implications of Conservation Areas on the extension of family homes* which went to Overview and Scrutiny Committee (OSC) in January 2015. Six recommendations were identified and agreed by the Cabinet on the 8 April 2015. This report presents progress made with regard to recommendation 3 which was to individually refresh the Conservation Area Character Appraisal and Management Plans for eight conservation areas with family dwelling houses where householders submit the most planning applications.

Of the eight areas, Addendums for Chapel House, Fairfield Road, Jesus Hospital, Tredegar Square, Victoria Park and York Square Conservation Areas were adopted by Cabinet on 26 July 2016. Officers were subsequently asked to consider as part of this process the possibility of the Council taking a more flexible approach to roof extensions within the other two conservation areas – Driffield Road and Medway.

A detailed assessment of the impact of a more flexible approach to mansard roofs on the character and appearance of the two conservation areas, and the potential public benefits associated with such works, as required by the National Planning Policy Framework (NPPF) was prepared alongside the refreshed appraisals and management plans. The findings of this assessment were reported to Cabinet on 6 December 2016. The report highlighted the significant harmful impact of the

proposals on the two conservation areas in the short and medium term. It also concluded that the public benefits associated with the proposals may be given only limited weight and they do not outweigh the harm identified.

Officers recommended that the Council should not pursue a more permissive approach to mansard roof extensions in the two conservation areas because of the resulting harm but that the Council should adopt the Conservation Area Appraisals and Management Guidelines with the detailed design guidance prepared in respect of the mansard roof extensions removed. Cabinet agreed on an alternative option, which was to explore measures for increasing the level of quantifiable public benefit associated with mansard roof extensions to mitigate the harm caused. It was agreed that the mitigation measures should be the subject of a public consultation, after which Cabinet would consider the principle of mansard roof extensions alongside the proposed mitigation measures in June 2017.

This report presents the proposed measures for increasing the level of public benefit and considers the degree to which they would mitigate harm to the character and appearance of the two conservation areas. Whilst officers do not consider that the measures would sufficiently overcome the potential harm to the historic environment, this report presents the option for Cabinet to adopt a more permissive approach to mansard roof extensions along with the measures that may help to mitigate this harm.

This report also sets out a number of practical issues relating to the implementation of the proposed mitigation measures, which will need to be overcome to help ensure that public benefit will be delivered alongside mansard roof extensions.

**Recommendations:**

The Mayor in Cabinet is recommended to:

1. Note that:
  - The Updated Assessment Report highlights that a more permissive approach to mansard roof extensions would result in a degree of harm in the short and medium term.
  - Officers recommend that the Council not proceed with the proposals based on the findings of the Updated Assessment Report.
  - Note the consultation feedback set out at section 3 of the report.
2. Support officer's recommendation not to pursue a more permissive approach to mansard roof extensions due to the harmful impact on the character and appearance of the Conservation Areas.
3. Agree that:
  - the detailed design guidance prepared in respect of the mansard roof extensions be removed from the Revised Character Appraisal and Management Guidelines attached as Appendix 2;
  - the Revised Character Appraisals and Management Guidelines for Driffield Road and Medway Conservation Areas (attached as Appendix 2) be adopted without the mansard roof guidance; and
  - the revised Character Appraisals and Management Guidelines will replace the existing Character Appraisals and Management Guidelines for Driffield Road and Medway Conservation Areas.

**Alternative option:**

The Mayor in Cabinet is presented with an alternative option, which is to:

1. Pursue a more permissive approach to mansard roof extensions in the Driffield Road and Medway conservation areas by adopting the Revised Character Appraisals and Management Guidelines (Appendix 2A) and the enhancement guidance documents (Appendix 2B).

## **REASONS FOR THE DECISIONS**

- 1.1. Following the Cabinet decision on 6 December 2016, officers have examined ways in which the levels of quantifiable public benefit associated with mansard roof extensions could be increased. These mitigation measures were the subject of public consultation from 7 April to 14 May 2017. Officers have considered the outcomes of this consultation and have reassessed the impact of a more permissive approach to mansard roof extensions in light of the proposed mitigation measures.
- 1.2. The Updated Assessment Report concludes that the proposed measures for increasing the level of quantifiable public benefit would mitigate harm to the historic environment to some degree. However, it also concludes that, overall, a more permissive approach to mansard roof extensions would still result in an unacceptable degree of harm to the character and appearance of the two conservation areas. In view of this, officers recommend that the Council not pursue a more permissive approach to mansard roof extensions due to the impact on the character and appearance of the conservation areas.

## **2. ALTERNATIVE OPTION**

- 2.1. **Pursue a more permissive approach to Mansard roof extensions.** Cabinet may decide to pursue a more permissive approach to mansard roof extensions in the Driffield Road and Medway conservation areas by adopting the Revised Character Appraisals and Management Guidelines (Appendix 2A) and the Enhancement Guidance documents (Appendix 2B).
- 2.2. This option involves Cabinet considering officers' advice and reaching a conclusion about the level of harm that they have assessed would be suffered as a result of a decision to take a more permissive approach, and, subject to the below, accepting this level of harm because they believe there will be sufficient public benefits to overcome this harm. In taking a decision to accept harm to the Driffield Road and Medway conservation areas members are entitled to consider the public benefits that would be secured, however, in the determination of applications for development in Conservation Areas or in the exercise of any functions under the planning Acts (including in taking decisions in relation to conservation areas), statute specifically requires the Council to pay special attention to '*the desirability of preserving or enhancing the character or appearance of that area*'. As a statutory obligation this requirement to preserve or enhance the character or appearance of the conservation areas must be given considerable importance and weight when balancing the harm against any public benefits, and it is not enough to simply ask whether the benefits of the policy outweigh the harm. Providing members have paid special attention to the desirability of avoiding that harm and have

acted lawfully in all other respects (see the Legal Comments in Section 5 of this report), Cabinet are entitled as a matter of law to take decisions that would result in harm in this context.

### **3. DETAILS OF REPORT**

#### **Overview and Scrutiny Challenge Session (November 2014)**

- 3.1. In November 2014 an Overview and Scrutiny Challenge Session was held to address a concern amongst some residents that the planning constraints in conservation areas were adversely affecting the ability of homeowners to remain in the Borough as their families grow. The perception from residents was that additional planning controls over extending properties within conservation areas were too restrictive. This issue was of particular concern to residents living within the Driffield Road and Medway Conservation Areas, but it was felt to be appropriate to look at these along with other conservation areas which were predominantly residential in character and which received large numbers of householder planning applications.
- 3.2. The Challenge Session looked to explore what changes to planning policy, practice or procedures could be made to address these concerns whilst still protecting the special character of these conservation areas.
- 3.3. Following the session a report was prepared outlining an action plan, identifying six recommendations, that was agreed by OSC and by the Cabinet on the 8 April 2015 (Appendix 1).

#### **Actions arising from the Overview and Scrutiny Challenge Session**

- 3.4. Following the adoption of the Action Plan in April 2015, officers analysed the eight conservation areas where householders submit the most planning applications to identify locations suitable for roof and rear extensions. They also undertook a review of Conservation Area Character Appraisals and Management Guidelines, and also considered how extensions were handled in other local authorities in Central London Boroughs.
- 3.5. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that with respect to any buildings or other land in a conservation area, in taking decisions on planning applications the decision maker must pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Case law suggests that whilst an assessment of the degree of harm is a matter for planning judgment, once a decision maker considering a proposal finds that it would result in harm to a conservation area it must give considerable weight to the desirability of avoiding that harm, and it is not enough to ask whether the benefits of a development outweigh the harm.

- 3.6. Officers carried out an extensive review of the eight conservation areas, including a detailed analysis of all properties and their appropriateness for roof and rear extensions as set out in Recommendation 3 of the action plan. This enabled the identification of a set of criteria for roof and rear extensions that would enable family home extensions whilst ensuring that the proposals would be in keeping with the Council's statutory duty to preserve and enhance the character and appearance of the conservation area.
- 3.7. Officers prepared draft guidance covering extensions to the roof and to the rear of residential properties, in the form of an addendum to the existing guidance for eight of its conservation areas; Chapel House, Driffield Road, Fairfield Road, Jesus Hospital Estate, Medway, Tredegar Square, Victoria Park and York Square conservation areas.
- 3.8. The resulting Addendums provided more flexibility for rear extensions than for roof extensions to balance the possible impacts on the conservation areas whilst allowing more flexibility for family home extensions. Supporting this guidance the Council also prepared a draft guidance note for mansard roof extensions in conservation areas, setting out elements of good practice.

**First Round of Public Consultation (23 November 2015 to 18 January 2016) – Addendums without causing harm**

- 3.9. The Addendums and Mansard Roof Guidance Note documents were the subject of a consultation between the 23 November 2015 and the 18 January 2016. During this period six public consultation sessions were held that provided an opportunity for local residents and stakeholders to discuss the proposals with officers and provide feedback.
- 3.10. The proposals tabled for public consultation did not cause harm to the character and appearance of the conservation areas as the locations identified for roof and rear extensions were carefully chosen to avoid harm.

**Consultation feedback**

- 3.11. Following public consultation, officers reviewed all the consultation responses and presented the findings to the Mayor for his consideration. The Mayor, after carefully considering the consultation feedback and other material considerations set out by officers in various briefing notes, reached the view that officers should:
  - Progress with the adoption of the Addendums for the six conservation areas (Chapel House, Fairfield Road, Jesus Hospital, Tredegar Square, Victoria Park, and York Square Conservation Areas as prepared by officers).

- Undertake detailed design work to explore further the opportunities for a more permissive approach to mansard roof extensions for family houses in the Driffield Road and Medway Conservation Areas

3.12. The Addendums for six conservation areas, Chapel House, Fairfield Road, Jesus Hospital Estate, Tredegar Square, Victoria Park, and York Square, were recommended by officers for adoption, as the locations for roof and rear extensions identified in the Addendums would not cause harm to the character and appearance of the conservation areas under consideration. The Addendums balanced the need for family home extension in the six areas whilst maintaining Council's statutory duty to preserve and enhance the character and appearance of the conservation areas.

3.13. The Addendums for Chapel House, Fairfield Road, Jesus Hospital Estate, Tredegar Square, Victoria Park, and York Square conservation areas were adopted by the Cabinet on 26th July 2016. The Cabinet Report relating to the adoption of the six Addendums and the recommendation to undertake further detailed design work for Driffield Road and Medway Conservation Areas can be viewed on the Council's website can be viewed on the Council's website:

[http://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Development-control/Conservation-areas/Cabinet\\_Addendums\\_to\\_six\\_Conservation\\_Areas.pdf](http://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Development-control/Conservation-areas/Cabinet_Addendums_to_six_Conservation_Areas.pdf)

3.14. As part of that Cabinet adoption process, it was noted that further research would be undertaken to fully explore the potential for extensions for family homes in Driffield Road and Medway conservation areas, with a particular focus on the possibility of roof extensions.

**Detailed design guidance for Driffield Road and Medway – a more permissive approach to mansard roof extensions**

3.15. A design brief was prepared and tenders were invited from heritage and architectural consultants to undertake further detailed design guidance to explore opportunities for mansard roof extensions in Driffield Road and Medway conservation areas. Kennedy O'Callaghan Architects and Alan Baxter Associates successfully tendered for the project and were appointed in May 2016.

3.16. Officers worked with the consultants to revise the existing character appraisals and management guidelines for Driffield Road and Medway conservation areas. This has drawn on officer's knowledge of the conservation areas and Alan Baxter's experience of assessing conservation areas and producing character appraisals and audits. Kennedy O'Callaghan have considerable practical experience in conservation projects, undertaking alterations and repairs to listed buildings and buildings in conservation areas

and provided valuable technical design advice. The consultants brief was to explore a more permissive approach to mansard roof extensions.

- 3.17. The project team established what positively contributed to the character and appearance of the conservation areas, and also what detracts from their character and appearance. Historical research was carried out and historic maps were analysed for the two Areas. A review of existing appraisal documents was carried out and they were revised to more clearly acknowledge the key positive characteristics, while maintaining its overall structure. The appraisals identify threats, pressures and opportunities for the Conservation Areas (Appendix 2A).
- 3.18. Having identified the pressures and opportunities in the Character Appraisal, the Management Guidelines provide more guidance on how to implement the opportunities for enhancement and manage development. The revised appraisals consider how to manage change in Driffield Road and Medway conservation areas in the short, medium, and long term. They also include draft prototype designs for mansard roof extensions carefully designed to be as sympathetic as possible within the Conservation Areas. For continuity and ease, the Management Guidelines are integrated into the same document as the Character Appraisal for each conservation area (Appendix 2A).
- 3.19. The proposals included refreshing the existing character appraisals and management guidelines for the two areas and developing detailed design principles for mansard roof extensions, together with a prototype for a mansard roof (Appendix 2A).
- 3.20. Officers consulted amenity societies (Historic England, the Victorian Society, the Georgian Group, the Ancient Monuments Society and the Society for the Protection of Ancient Buildings) and sought their feedback on the approach taken, the methodology and the detailed design proposals.

**Second Round of Public Consultation (25th July to 11 September 2016) - a more permissive approach to mansard roof extensions in Driffield Road and Medway conservation areas**

- 3.21. The proposals for Driffield Road and Medway conservation areas were the subject of an inclusive public consultation between 25 July and 11 September 2016. The proposals were published on the Council's website for residents' feedback. During this period three public consultation events were also held in Bow. At these sessions officers and consultants presented the proposals to residents and stakeholders and addressed queries and noted comments.
- 3.22. Historic England, The Victorian Society, The Georgian Group, Society for the Protection of Ancient Buildings and The Ancient Monuments Society were

invited to comment on the consultation documents. Registered Providers who own housing stock in the two conservation areas were also contacted and asked to comment.

### **Consultation feedback**

- 3.23. A total of 55 written responses were received from residents of the two conservation areas. There are a total of 1,750 addresses in the two conservation areas. 76% of those who responded supported a more permissive approach to mansard roof extensions and 24% objected to it. Two petitions were also received earlier in the year.
- 3.24. Historic England's consultation response noted that the proposals gave rise to the potential for numerous piecemeal roof extensions, which could result in harm to the historic environment. Historic England recommended that the Council consider whether the potential harm to the significance of the conservation areas is outweighed by the public benefits. The Victorian Society's response noted that whilst the guidance was intended to minimise harm and a loss of character, conceding a blanket allowance of upward extensions within these conservation areas would entail a high level of cumulative harm.
- 3.25. Two Registered Providers responded to the consultation, both choosing to neither support nor reject proposals for a more permissive approach to mansard roofs. In addition, neither stated that they had any immediate desire to add roof extensions to their properties. However, one provider did note that this may enable them to improve the number/choice of homes they were able to offer.

### **Assessment of harm vs public benefit of the proposals**

- 3.26. Officers carefully considered all of the consultation responses received and also carried out a detailed assessment of the likely impact of adopting a more permissive approach to mansard roof extensions. The National Planning Policy Framework (NPPF) states that where a development proposal, such as a mansard roof extension, would lead to harm to the significance of a designated heritage asset, such as a conservation area, that harm must be weighed against the public benefits of the proposal. Officers prepared a methodology for assessing the impacts of the proposals on the character and appearance of the conservation areas that takes into account national, regional and local policies (Appendix 4). The assessment methodology follows closely the methodology followed by Planning Inspectors when assessing planning appeals in conservation areas. The assessment methodology was also assessed independently by a planning barrister to ensure it was robust and defensible.

3.27. A detailed commentary on this assessment was reported to Cabinet on 6 December 2016 (Appendix 1B). In summary, the commentary noted that:

- Traditional roof forms and the consistent parapet line are important features of the two conservation areas.
- Mansard roof extension would result in the loss of historic building fabric.
- Piecemeal roof extensions would disrupt existing parapets lines.
- Overall, mansard roof extensions cause significant harm to the character and appearance of the two conservation areas.

#### **Other considerations**

3.28. Officers also took a number of other considerations into account:

- Subdivision of family dwellings
- Threat to the historic environment
- Affordability
- Equality Analysis Quality Assurance checklist (EAQA)

#### **December 2016 recommendation**

3.29. Officers presented the above findings to Cabinet on 6 December 2016 and recommended that the Council not pursue a more permissive approach to mansard roof extensions due to the harm that would be caused to the character and appearance of the two conservation areas. Cabinet noted the officers' recommendation and decided to pursue an alternative option that was presented by officers in the Cabinet report. This alternative option was to explore ways to increase the level of quantifiable public benefit associated with proposals for mansard roof extensions to help mitigate the harm caused to the historic environment. Cabinet also agreed to consider the revised Character Appraisals and Management Plans for Driffield Road and Medway conservation areas alongside relevant measures for mitigating harm in June 2017.

#### **Increasing public benefit associated with mansard roof extensions**

3.30. In response to the Cabinet decision, the design consultants that prepared the prototype designs for mansard roof extensions were re-commissioned to examine ways in which the level of quantifiable public benefit associated with mansard roof extensions could be increased. The consultants examined two types of enhancement that could be made to the conservation areas:

- i. Enhancements that can be made by homeowners to improve the appearance of their properties. These improvements will, in turn, help to improve the character and appearance of the conservation areas generally.

- ii. Enhancements to streetscape that will contribute to the general improvement of the character and appearance of the conservation areas, these enhancements are specifically heritage related. These improvements could be delivered by financial contributions made through agreements associated with the grant of planning permission.
- 3.31. The potential enhancements that could be made by homeowners to improve the appearance of their properties were presented in two consultation documents; one for each of the conservation areas (Appendix 2B). The documents illustrate the potential for enhancements to be made for each to individual properties by the reinstatement of lost features. If carried out to an appropriately high standard, the suggested enhancements could provide a public benefit that may help to mitigate harm caused by the addition of mansard roof extensions. The guidance is intended to show the standards expected and to illustrate examples that would be appropriate. The documents explain why using materials and workmanship to match the original could uplift the quality of the street. Adopting a consistent design over a group of houses or a whole terrace could contribute positively to the character of the area and could be considered a public benefit that would help to mitigate harm. The documents suggest that the façade improvements may be delivered alongside proposals for the mansard roof extensions through the use of planning conditions.
- 3.32. The potential enhancements to the streetscape of both conservation areas were presented in a single document (Appendix 2B). The document identifies potential streetscape enhancement schemes that may help to improve the special character and appearance of the Driffield Road and Medway conservation areas. If implemented successfully, these enhancement schemes could provide a public benefit that may mitigate harm caused by the addition of mansard roof extensions to properties in the conservation areas. The document explains how the enhancement schemes could be funded by financial contributions secured by legal agreements associated with the grant of planning permission for mansard roof extensions. The document provided an illustration of funds that could be collected if each planning applicant made a contribution of £1,000. The document suggested that 25% of the funds collected may be required to go toward the cost of administering the streetscape improvement schemes.

**Third round of public consultation (7 April to 14 May 2017) – façade and streetscape improvements**

- 3.33. The possible improvements to building facades and conservation area streetscape were the subject of public consultation between 7 April and 14 May 2017. Consultation documents were published on the Council's website

and a letter, notifying residents of the consultation, was sent to every address in Driffield Road and Medway conservation areas. An email was also sent to residents of the two conservation areas who had responded to previous consultations by email, the email provided direct links to the consultation documents. The consultation was also advertised on the Council's Twitter feed.

3.34. Two drop-in events were held in Bow as part of the consultation. At these events consultation material was displayed and Council officers and the Council's design consultants were on-hand to answer any questions and discuss the proposals with members of the public. The two events were held on:

- Thursday 20 April 2017, 17.00 to 20.00 at Bow Idea Store.
- Thursday 11 May 2017, 14.00 to 17.00 at St Paul's Church.

3.35. In addition to seeking the views of local residents; Historic England, the Victorian Society, the Georgian Group, the Ancient Monuments Society and the Society for the Protection of Ancient Buildings (SPAB) were also contacted. As were Registered Providers who own housing stock in the two conservation areas were also contacted and asked to comment.

#### **Consultation feedback**

3.36. A total of **209** responses were received. The majority were sent by email, with some written comments handed in at the consultation events and a small number sent through the post. Not all of the responses received offered comments on the possible improvements to building facades and conservation area streetscape, but instead commented on the acceptability of mansard roof extensions in general.

3.37. **115** responses offered some support for the principle of façade enhancements to mitigate harm caused by mansard roof extensions. **94** responses offered some support for the principle of streetscape enhancements to mitigate harm caused by mansard roof extensions.

3.38. **16** responses objected to the use of façade enhancements to mitigate the harm caused by mansard roof extensions. **19** responses objected to the use of streetscape enhancements to mitigate the harm caused by mansard roof extensions.

3.39. A number of residents who supported the proposed façade enhancements did so cautiously, on the understanding that they are applied in a 'sensible fashion'. Some respondents questioned how harm and benefit might be quantified and how the assessment of these would be applied consistently

and fairly across planning applications. Other respondents questioned if the Council would be able to enforce the delivery of façade enhancements.

- 3.40. A number of residents advised that they have already carried out façade improvements to their buildings, commenting that this may limit their ability to provide further enhancements as part of a planning application including a mansard roof extension. Residents also commented that it would seem unfair if historic façade improvements were not taken into account in the balancing of harm for a future application for a mansard roof extension.
- 3.41. A number of residents who supported the proposed streetscape enhancements also did so cautiously, again on the understanding that they are applied in a 'sensible fashion'. Some of the proposed streetscape enhancements were specifically welcomed, and additional suggestions such as lighting to tackle anti-social behaviour, traffic calming measures and cycle storage were also made.
- 3.42. Many of the consultation responses received did not comment specifically on the example of a £1,000 contribution given in the consultation documents. However, a small number of residents commented that this would be a reasonable amount. A small number of residents suggested that the contribution should be greater than £1,000, including one suggestion that it should be 5% of the total build cost of the mansard roof extension.
- 3.43. As noted above some residents objected to the proposal to collect a financial contribution to fund streetscape improvements. This included comments that the types of improvement suggested should be paid for by the Council or by financial contributions collected from larger commercial development schemes, rather than from contributions from householder development. It was also suggested that collecting an administration fee to cover the cost of administering the schemes was unreasonable.
- 3.44. **58** responses supported a more permissive approach to mansard roof extensions, but did not offer comments on the proposed enhancements. **14** responses objected to a more permissive approach to mansard roof extensions, but did not offer comments on the proposed enhancements.
- 3.45. **Nine** responses were received from residents of other conservations areas (four from Clinton Road and five from Tredegar Square). All of these supported a more permissive approach to mansard roof extensions, and six specifically supported the proposed façade and streetscape enhancements. **44** responses did not state which conservation area they related to.

- 3.46. Overall, **178** responses supported a more permissive approach to mansard roof extensions and **31** objected to it.
- 3.47. **36** responses indicated that they intended to submit a planning application for a mansard roof extension in the near future.
- 3.48. Historic England commented as follows:

*“We remain concerned that the overall proposal still has the potential to create random roof interventions which would undermine the overall consistency of character as it does not facilitate a consistent approach. The impact of isolated or piecemeal roof extensions to compact properties could be significant. In our view, this may result in a greater detrimental impact than a consistent approach in terms of groups of properties undertaken to a set timescale through a Local Development Order.*

*Proceeding on an individual basis would require applicants to undertake a wider package of repairs and enhancements, presumably conditioned and secured through legal agreement to ensure they are delivered. We must therefore ask how the Council would approach an application from a property in good condition with little obvious public benefit which is seeking to implement a roof extension? The list of public realm and environmental enhancements could potentially be difficult to deliver and would require sufficient funding and coordination to achieve sufficient benefit to justify the potential for “serious” harm.*

*Ultimately the judgement in respect of whether the public benefit can outweigh the harm to character and appearance rests with Council as local planning authority. However, in our view the mechanisms suggested within the draft cause concern that these aims are irreconcilable through this approach. Additionally, the proposal could be considered to set an unfortunate precedent which would be hard to resist in other conservation areas.”*

- 3.49. The Victorian Society commented as follows:

*“Further to our previous comments, which we would like to reiterate, we offer the following additional comments following a discussion of the proposals by our Southern Buildings Committee, and wish to object to them in principle.*

*Much of the character of these conservation areas is derived from the small scale of these houses, which would have been typical of the East End, and they are key in creating a strong sense of place. Enlarging them*

*would result in the loss of their humble character as well as their defining architectural qualities – the deliberate lack of visible roofs which produces hard, straight-edged silhouettes framed against the sky – and their uniformity in this. Whilst many residents would like larger accommodation, many are also attached to the aesthetic and historic qualities that conservation area designation is intended to protect.*

*The consultation documents are not considered to be particularly honest, in that the visualizations show whole streets with mansard roof extensions, when in reality there will be nothing like such consistency. There will be a long term gap-toothed appearance on all of the streets, where many presently are unified in their appearance, which will exacerbate the harm to the conservation areas that would arise from the architectural integrity of the majority of the buildings in them being compromised. This harm is to be weighed against the heritage benefits that would accompany each roof extension, in the form of the compulsory reinstatement of missing architectural features or streetscape enhancements. Whilst these would undoubtedly be positive, they would not be particularly meaningful unless these improvements occurred on the vast majority of the houses, which is unlikely to happen.*

*Given that the balance is already weighted in favour of preservation (i.e. doing no harm) in both legislation and policy, limited heritage benefits cannot be seen to outweigh the high level of harm that would occur. Thinking in terms of the NPPF, the harm to the significance Conservation Areas should be considered to be substantial and this would require a substantial public benefit to outweigh it; this is not present. The four tests of paragraph 133 of the NPPF are therefore engaged and none can reasonably be said to apply given that the properties will always remain viable residential accommodation and have done so for over 150 years. Allowing upward extensions would only serve to increase the value of properties in these areas, therefore eroding the Borough's small, affordable housing stock.”*

- 3.50. No comments were received from the other amenity societies or Registered Providers.

#### **Reassessment of harm v public benefit of the proposals**

- 3.51. Officers have carefully considered all of the consultation responses received and have also re-assessed the likely impact of adopting a more permissive approach to mansard roof extensions in light of the façade enhancement and streetscape enhancement guidance. This is presented in the Updated Assessment Report (Appendix 5B).

- 3.52. The National Planning Policy Guidance (NPPG) states that public benefits can be anything that arises from a development that delivers economic, social or environmental progress. Economic, social and environmental progress is defined by paragraph 7 of the NPPF. The NPPG also states that public benefits may include heritage benefits, such as:
- Sustaining or enhancing the significance of a heritage asset and the contribution of its setting.
  - Reducing or removing risks to a heritage asset.
  - Securing the optimum viable use of a heritage asset in support of its long-term conservation.
- 3.53. The NPPG states that public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits.
- 3.54. The public consultation documents presented some possible options for ways that enhancements could be made to conservation area buildings and to common streetscape elements in the conservation areas. If delivered to an appropriately high standard these enhancements may be considered to be public benefits as they may help to improve the character and appearance of the conservation area environment, which would be delivering environmental progress. The enhancements may also be considered to be heritage benefits as, on their own, they may sustain or enhance the significance of a heritage asset and may reduce risk to a heritage asset.
- 3.55. The assessment report notes that an important aspect of public benefits is that they should 'flow from the proposed development'. This is taken to mean that there should be a direct relationship between the proposed development and the benefit being delivered. That is, the benefit should be delivered as a result of the development that causes harm and that the two things should not be incidental. A key consideration in determining this is whether there is a prospect that the benefit may also arise independently of the harmful development.
- 3.56. The above point is illustrated by a recent planning appeal decision, relating to a domestic extension in a conservation area in Tower Hamlets, in which the Planning Inspector gave limited weight to the replacement of UPVC windows with timber sash windows as a public benefit to be balanced against harm caused to the historic environment. The Inspector noted that the replacement windows would enhance the public realm (by improving the appearance of the host building, as it would be viewed from the street), and that this would

provide a public benefit. However, this benefit was only given limited positive weight as, while it formed part of the proposals, it was concluded that there was nothing to say that the replacement would not have taken place in any event. In view of this, the Updated Assessment Report concludes that only limited weight can be applied to each of the potential façade improvements.

- 3.57. The public consultation documents also suggested possible enhancements that could be made to the common areas of the two conservation areas to increase the level of public benefit that may be associated with mansard roof extensions. A range of possible measures were put forward, and an indication of their potential costs provided. The updated assessment report notes that whilst these enhancements, on their own, be considered public benefits, they are unlikely to deliver improvements to the conservation areas on a scale that would be required to overcome the significant harm that would be caused by adopting a more permissive approach to mansard roof extensions. In view of this, the Updated Assessment Report concludes that only limited weight can be applied to each of the potential streetscape improvements.
- 3.58. Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 requires local planning authorities, in exercising their planning functions, to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Case law confirms that in exercising this statutory duty, decision makers should attach 'considerable importance and weight' to desirability of preserving conservation areas. These decisions also confirm that the need to attach considerable importance and weight should apply even where the harm identified is less than substantial.
- 3.59. The Updated Assessment Report finds that, in light of this statutory duty, and despite the possibility that the proposed façade enhancements may increase the level of public benefit that may be associated with mansard roof extensions, there would not be sufficient benefit to overcome the significant degree of harm that would be caused to the character and appearance of the two conservation areas.

### **Implementation**

- 3.60. If the Council were to proceed with adopting a more permissive approach to mansard roof extensions, residents would still be required to submit a planning application before proceeding with any development. Any such applications will need to be determined by the Council's Development Management Team, with assistance from the Council's Place Shaping Team.

- 3.61. Whilst the Council has prepared a detailed appraisal of the character of the two conservation areas, guidance on the possible design of mansard roof extensions and guidance on possible enhancements that may mitigate harm caused by mansard roof extensions, each planning application for a mansard roof will need to be judged on its own merits and will require careful consideration by officers. It is not possible to calculate a standard amount of public benefit that can be applied in every case to overcome the harm caused by a mansard roof extension. This will need to be determined through discussions between the applicant and Council officers. This is likely to be a complex process, placing significant demand on officer resource.
- 3.62. Residents would be encouraged to use the Council's pre-application service before submitting an application. At present, domestic extensions are usually dealt with by the Council's Duty Planner, which is a free service offered on a drop-in, first come first serviced basis. Given the complexities of determining the appropriate amount of public benefit in each case, the Duty Planner service will be inappropriate for providing the level of technical advice required.
- 3.63. Once a planning application has been submitted, the Council must issue a decision within eight weeks. If an appropriate level of mitigation has not been agreed through the pre-application process, for example if the applicant chooses not to use this service or there remains a difference of opinion, the complexities of agreeing an appropriate level of mitigation may have an impact on the Council's ability to decide applications within statutory deadlines.
- 3.64. Once an appropriate level of mitigation has been agreed, the Council will need to ensure that the proposed public benefits are delivered to ensure that the mitigation occurs. The consultation documents suggest that façade enhancements may be secured through the use of planning conditions.
- 3.65. Section 14 of the Neighbourhood Planning Act, which received Royal Assent on 27 April 2017, will, when implemented, introduce restrictions on the impositions of planning conditions. This includes restricting the use of pre-commencement conditions, unless written agreement is provided by the planning applicant. Other types of condition, requiring an applicant to fully complete a development, by delivering enhancement works as well as a mansard roof, are unlikely to be enforceable. It therefore remains unclear whether the public benefits in the form of façade enhancements can be secured through the planning process.
- 3.66. Some of the properties in the conservation areas have been sub-divided into two flats. In such cases, a mansard roof application would be made by the

upper floor flat. However, parts of the building that would be suitable for enhancement works may be part of the lower floor flat. The consultation documents suggest that, where this is the case, the applicant should identify façade enhancements for the whole property and try to work with the owner of the lower floor flat to deliver a comprehensive façade enhancement scheme. However, it must be recognised that the owner of the lower floor flat cannot be compelled to help deliver façade enhancements. Alternatively, grant funding (from the streetscape improvement fund) could be made available to the owners of lower floor flats to help improve the parts of the building façade that are under their ownership. In such cases, the owner of the upper floor flat may be able to pay additional contributions amounting to the cost of the façade enhancements that they could not deliver, but would have, had they owned the whole property. However, grant schemes tend to be expensive and time consuming to implement and would require a greater proportion of collected funds to be spent on administration.

- 3.67. As noted above, a number of residents that responded to the public consultation stated that they have already carried out a number of façade enhancements to their properties. These existing enhancements may be considered to be incidental to a future planning application for a mansard roof extension. As such, they may not be considered to flow from the proposed development, as required by National Planning Policy Guidance. The Council would not want to disadvantage residents who have already carried out façade improvements and want to make a future planning application for a mansard roof extension. Consideration would therefore need to be given to whether it would be lawful to take existing public benefits into account or whether alternative mitigation, such as additional financial contribution, may be required.
- 3.68. The consultation documents suggest that the streetscape enhancements may be delivered by financial contributions secured through legal agreements attached to the grant of planning permission. Reaching such legal agreements can be a lengthy process, particularly as they often require additional signatories such as those of the freeholder and/or mortgage provider. If the Council is unable to impose a Grampian condition restricting commencement until an agreement has been reached, it would mean delays in determining the application.
- 3.69. In view of the challenges relating to the effective implementation of the proposed mitigation measures, officers suggest that, if a more permissive approach to mansard roof extensions is to be pursued, further work will be required to look at the best way to deliver public benefit within the limits of the planning system.

### **Other conservation areas**

- 3.70. As noted above, a number of consultation responses were received from residents of other conservation areas, including Clinton Road and Tredegar Square.
- 3.71. The Council has already given consideration to the opportunities for both rear and roof extensions in six other conservation areas (Chapel House, Fairfield Road, Jesus Hospital Estate, Tredegar Square, Victoria Park and York Square) and addendums for these conservation areas were adopted by Cabinet in July 2016. These addendums allow greater flexibility for rear extensions.
- 3.72. Elsewhere, both within and outside of conservation areas, mansard roof extensions will continue to be considered on their own merits, in accordance with policy.

### **Minor amendment to the Medway Conservation Area Appraisal and Management Guidelines**

- 3.73. During the preparation of the façade enhancement guidance for Medway Conservation Area, a minor error in the Medway Conservation Area Appraisal and Management Guidelines document was identified. The text of the appraisal has subsequently been amended to reflect the fact that there are very few original railings remaining in the Medway Conservation Area. This is reflected in the proposed façade and streetscape enhancement guidance, which notes that, due to the lack of original railings in Medway Conservation Area to provide a precedent for restoration, generic but sympathetic replacements could be used.
- 3.74. The amended Medway Conservation Area Appraisal and Management Guidelines document was published on the Council's website alongside the façade and streetscape enhancements guidance documents during the recent public consultation. The amended document is also appended to this report (within Appendix 2B) and Cabinet is asked to consider this version for adoption.

### **Equality Analysis Quality Assurance Checklist (EAQA)**

- 3.75. Officers undertook an equalities assessment of the revised Character Appraisals and Management Guidelines (including the proposal for a more permissive approach to be taken to mansard roof extensions within the Driffield Road and Medway Conservation Areas) in the form of Equality Analysis Quality Assurance Checklist (Appendix 6). In respect to the revisions that provide more general updates to these documents to allow for better management of the conservation area (which officers are recommending for adoption), the checklist concludes the policy is directed toward the built fabric

and will affect the community who live within it irrespective of their characteristics.

- 3.76. In respect of the approach to be taken to mansard roof extensions, the findings of the checklist conclude that there is potential for a more flexible approach to have a positive impact on people living within the two conservation areas. These benefits however would not extend to people with protected characteristics who live within other conservation areas in the borough (who could potentially benefit from such a policy to a greater degree or in different ways than the general public). To this end there is a risk of discrimination against these people (albeit the discrimination would also apply to some degree to those without protected characteristics in other conservation areas as well). As such any discrimination is likely to be an indirect or unintended consequence of the Council carrying forward its wider objective to assist growing families in the two Conservation Areas and the status quo would be retained for those in other areas.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1. Cabinet and the Overview and Scrutiny Committee have previously considered reports on the implications of conservation areas on the extension of family homes, with the Mayor in Cabinet on 26<sup>th</sup> July 2016 approving the adoption of 'Addendums to Conservation Area Character Appraisal and Management Guidelines' for six conservation areas.
- 4.2. Two further conservation areas, Driffield Road and Medway, were considered at the 26<sup>th</sup> July 2016 meeting, and subsequently further design guidance for these areas was prepared in conjunction with external heritage and architectural design consultants. The results of the consultation process for the proposed updated guidance were reported to the Mayor in Cabinet on 6<sup>th</sup> December 2016, where it was decided that an additional option of increasing the level of quantifiable public benefits to mitigate the harm caused to the historic environment from the mansard roof extensions should be developed, and further consultation undertaken. This report provides an update on that process.
- 4.3. The report examines various mitigation factors, one of which is the possible establishment of a fund to provide financing for measures to enhance the streetscape within the conservation areas (paragraph 3.32). If introduced, it is proposed that this would be operated in line with existing arrangements for the administration of Section 106 planning obligations with resources set aside in a 'Streetscape Enhancement fund' and allocated in line with the Council's Infrastructure Delivery Framework and grants determination governance arrangements. The initial report undertaken by external consultants has used

an illustrative contribution level of £1,000 per extension, with a 25% element top-sliced to finance administration costs, however as is the case with Section 106 agreements, the financial contribution would be determined and negotiated for each individual application. It is estimated that approximately 40 applications for Mansard Roof extensions may be received in the short term within the Driffield Road and Medway conservation areas if extensions are permitted.

- 4.4. Although Counsel's advice has been used in the drafting of the policy, this does not prevent the risk of a legal challenge to the Council's decision, which would take the form of a judicial review in the High Court. If a successful challenge took place, there is a risk of a significant cost liability to the Council which should be avoided if possible given the uncertainty of successfully defending the Council's position and the potential costs involved. The potential liability would depend on a variety of factors including how far the appeal went through the courts (following the appeal being heard in the High Court, it could then pass to the Court of Appeal and then could be referred to the Supreme Court).
- 4.5. Estimates of the Council's costs for a judicial review that is resolved at the High Court stage exceed £25,000. If the Council is unsuccessful it will also be liable for the claimant's costs which could be substantially higher, and it is therefore possible that proceedings determined at this first stage could cost in excess of £100,000. Costs would increase further if the Council is unsuccessful and the judicial review progresses beyond the High Court. However, if the Council is successful in defending the proceedings, it is likely the appellant would have to reimburse the Council's costs.
- 4.6. It would seem that there are significant financial risks associated with a successful legal challenge to adopting a more permissive policy and subsequently approving planning applications in line with that policy, particularly given that the assessment commissioned by the Council and summarised in paragraphs 3.26 and 3.27 does not support a more permissive approach.
- 4.7. As was the case with the previous reports, the recommendations are associated with reviewing and updating policies and planning documentation. The resources relating to the preparation of the amendments to the conservation area guidelines and the undertaking of the formal consultation processes have mainly been officer time, the costs of which have been met from within existing budgets. However in this specific case, external heritage and design consultants have been commissioned to undertake detailed design guidance for mansard roof extensions within the Driffield Road and Medway areas, and Counsel's advice has also been sought on the

implications if a permissive approach to mansard roof extensions in these two conservation areas is adopted. These costs are estimated at approximately £90,000 and will also be met from existing resources.

## **5. LEGAL COMMENTS**

- 5.1. This report recommends to the Cabinet to not adopt a more flexible approach to roof extensions within the Driffield Road and Medway Conservation Areas through Revised Character Appraisals and Management Guidelines and the Enhancement Guidance documents. In summary, this is on the basis of:
  - 5.1.1. the potential for harm in the medium and short term to the character and appearance of areas notwithstanding the proposed public benefits intended to outweigh any such harm that were investigated, as identified in the Updated Assessment Report;
  - 5.1.2. the potential difficulties in securing such public benefits through development control in any event; and
  - 5.1.3. the potential risk that such a permissive approach could create a precedent leading to similar harm being caused to other conservation areas.
- 5.2. If the Cabinet does not agree with the officer recommendation then the alternative option is to adopt the permissive approach through Revised Character Appraisals and Management Guidelines and the Enhancement Guidance documents (as explained in section 2 of this report). And if the Cabinet does decide to do this, then officers also advise that further work will be required to look at the best way to deliver public benefit within the limits of the planning system.
- 5.3. Decisions on changes to the conservation areas should be construed in the context of the Council's general statutory duty in respect of conservation areas in the exercise of its powers as the local planning authority (LPA) for the London Borough of Tower Hamlets, as described below.
- 5.4. Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Act") provides that it shall be the duty of a LPA from time to time to formulate and publish proposals for the preservation and enhancement of any parts of their area which are conservation areas. Any proposals under this section are required to be submitted for consideration to a public meeting in the area to which they relate, and the LPA must have regard to any views concerning the proposals expressed by persons attending the meeting.

- 5.5. In the determination of applications for development in Conservation Areas or in the exercise of any functions under the Planning Acts (including in taking decisions in relation to conservation areas), statute specifically requires the Council to pay special attention to '*the desirability of preserving or enhancing the character or appearance of that area*' (section 72(1) of the 1990 Act).
- 5.6. Furthermore, the National Planning Policy Framework (NPPF) requires decisions on planning applications to be made in accordance with local planning policies. This includes decisions made by the Council, in its capacity as the LPA, on planning applications for mansard roof extensions.
- 5.7. This report demonstrates that officers have assessed the impacts of taking a more permissive approach to roof extensions within the two conservation areas in light of the Updated Assessment Report and the investigation into public benefits to mitigate harm. Whilst the Updated Assessment Report acknowledges that the public benefits may reduce harm to some degree, overall it would still be unacceptable within these conservation areas.
- 5.8. With that in mind, the Council must have regard to the statutory duty under section 72 to give special attention to '*the desirability of preserving or enhancing the character or appearance of that area*' when making its decision. This duty should be given considerable importance and weight when balancing the harm against any benefits and special weight should be given to the desirability of avoiding that harm.
- 5.9. After considering this report and the supporting documents the Cabinet is entitled to reach its own conclusion on whether to pursue change of approach contemplated. However, it should be pointed out that, as with any of its decision, the Council will be at risk of legal challenge; particularly where a decision is taken against officer advice.
- 5.10. That said, a defence to such a challenge can be made so long the Council complies with its duty under Section 72, considers all material considerations, and does not have regard to any considerations that are not material to this decision (and otherwise acts lawfully)
- 5.11. As regards the consultation that has been carried out it is important to emphasise it must have been in line with the following common law criteria:
  - 5.11.1. it should be at a time when proposals are still at a formative stage;
  - 5.11.2. the Council must give sufficient reasons for any proposal to permit intelligent consideration and response;

- 5.11.3. adequate time must be given for consideration and response; and
- 5.11.4. the product of consultation must be conscientiously taken into account.
- 5.12. The relevant passages in section 3 of this report indicate how the various consultation exercises satisfy that criteria. Robust and appropriate consultation has been carried out. Before any decision being made, full and proper account of the consultation responses should be taken.
- 5.13. In deciding whether to bring forward the recommendations in this report, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not. An Equality Analysis Quality Assurance Checklist has been carried out, which is discussed above. How this duty is met is addressed in the paragraph below headed 'One Tower Hamlets Considerations'.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1. One of Tower Hamlets great strengths is its diversity, however, this diversity can sometimes result in inequality. One Tower Hamlets is about reducing the inequalities and poverty that we see around us, strengthening cohesion and making sure our communities continue to live well together.
- 6.2. A key theme in the Tower Hamlets Community Plan is that of A Great Place to Live. The Community Plan states that: "A Great Place to Live" reflects our aspiration that Tower Hamlets should be a place where people enjoy living, working and studying and take pride in belonging". The preservation and enhancement of areas of special architectural or historic interest may make a significant contribution to the local environment and how people feel about Tower Hamlets. Pride in the local environment may serve to bring communities together across ages and backgrounds.
- 6.3. Inclusion of a property on the Statutory List or within a Conservation Area can result in additional costs being incurred by occupants and owners, both in terms of the sympathetic repair of buildings and the development of proposals for their alteration or extension. The revised Character Appraisals and Management Guidelines will help to clarify the special character of a Conservation Area particularly with reference to possible extensions and thus help to minimise the costs by providing surety to the development process.

- 6.4. The proposals for façade enhancements and public realm improvements will help mitigate harm to the historic environment and will result in improvements which will offer public benefits.
- 6.5. An Equality Analysis was carried out to consider the public consultation undertaken and to assess the likely impact of the conservation area character appraisals and management guidelines on the Borough's diverse communities. The findings of this are discussed at paragraphs 3.56-3.57.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1. Work has been carried out by external consultants (Design and Heritage) with input from Council officers. Any additional work arising from this decision will be carried out by officers with the assistance of external consultants as necessary. External consultants will be procured using the competitive procurement process if required.
- 7.2. Consultation has been carried out with local residents in the two Conservation Areas, along with other key stakeholders. This is detailed in paragraphs 3.33 to 3.49 of this report.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1. There are no specific environmental implications associated with this report.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1. Progress on the addendums and Mansard Roof Guidance Note has been regularly reported through a number of internal groups that consider risk management and mitigation. These include:

- Directorate Management Team (3rd October 2016)
- Corporate Management Team (26th October 2016)

## **7. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- a. There are no specific crime and disorder reduction implications associated with this report.

## **8. SAFEGUARDING IMPLICATIONS**

- a. There are no specific safeguarding implications associated with this report.

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## Linked Reports, Appendices and Background Documents

### Linked Report

NONE.

### Appendices

<b>Appendix 1A</b>	Cabinet Report and Action Plan (8 April 2015)
<b>Appendix 1B</b>	Cabinet Report (6 December 2016)
<b>Appendix 2A</b>	Revised Character Appraisal and Management Plan for Driffield Road and Medway conservation areas
<b>Appendix 2B</b>	Façade enhancement guidance and streetscape enhancement guidance for Driffield Road and Medway conservation areas.
<b>Appendix 3</b>	Consultation feedback
<b>Appendix 4</b>	Methodology for assessing harm against public benefit of the proposals
<b>Appendix 5A</b>	Assessment Report (December 2016)
<b>Appendix 5B</b>	Updated Assessment Report (May 2016)
<b>Appendix 6</b>	Equality Analysis Quality Assurance Checklist

### Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

None

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