

<p><b>Cabinet</b></p> <p>27 June 2018</p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Ann Sutcliffe, Acting Corporate Director, Place</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Isle of Dogs Neighbourhood Plan Examiner's Report and Council's Response (Regulation 25)</b></p>	

<b>Lead Member</b>	<b>Cllr Rachel Blake, Deputy Mayor for Regeneration and Air Quality</b>
<b>Originating Officer(s)</b>	Ellie Kuper Thomas, Principal Planning Officer and Marissa Ryan-Hernandez, Plan Making Team Leader
<b>Wards affected</b>	Island Gardens Canary Wharf Blackwall and Cubitt Town
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	15 June 2018
<b>Reason for Key Decision</b>	Significant Impact on Two or More Wards
<b>Community Plan Theme</b>	<b>A Great Place to Live</b>

### **Executive Summary**

Neighbourhood planning was introduced by the Localism Act 2011 and allows communities to help shape their local area by preparing Neighbourhood Development Plans (NDP), or Neighbourhood Development Orders (NDOs), provided they meet a number of basic conditions, including being in general conformity with the strategic policies of a development plan. The Council has a statutory duty to assist communities in the preparation of NDPs and NDOs and to take plans through a process of examination and referendum.

The Isle of Dogs Neighbourhood Plan has been the subject of an independent examination process including a public hearing. On Thursday 7th June 2018, the Council and Forum received the final Examiner's Report on the Isle of Dogs Neighbourhood Plan (appendix 1). The Isle of Dogs Neighbourhood Plan Examiner has recommended that the proposed neighbourhood plan (NDP) is refused and should not proceed to referendum.

The Town and Country Planning Act 1990 (as amended) requires the Council to now make a decision with regards to the Examiner's recommendations and come to a conclusion as to whether the draft neighbourhood plan meets the basic conditions and legal requirements, or could meet the basic conditions and legal requirements, if modifications were made to the draft Plan.

The Examiner's recommendations have been considered and it is officers' view that

the Council should agree with the Inspector's recommendation that the NDP does not meet the basic conditions, and that due to the fundamental flaw identified by the Examiner and the cumulative nature of the policy drafting concerns he has raised, the NDP cannot be modified to meet the basic conditions and so should be refused and not proceed to referendum.

## **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Note the Isle of Dogs Neighbourhood Development Plan Report of Examination (Appendix 1) and the Examiner's recommendation that the draft Neighbourhood Plan does not meet the basic conditions stipulated by legislation and therefore should be refused and cannot proceed to referendum.
2. Agree with the Examiner's recommendations and therefore that the plan proposal be refused and not proceed to referendum.
3. Note that the Council will continue to provide support to the Isle of Dogs Neighbourhood Forum as they consider their next steps.
4. Note the specific equalities considerations as set out in section 8.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The Isle of Dogs Neighbourhood Plan has been the subject of an independent examination process including a public hearing. Following receipt of an Examiner's report on the 7<sup>th</sup> of June 2018 the Council is required to consider the recommendations in the report and decide what action to take in relation to each. The Council must also come to a decision regarding whether the draft neighbourhood plan meets the basic conditions and legal requirements or could meet the basic conditions and legal requirements, if modifications were made to the draft Plan (whether or not recommended by the Examiner). If the Council decides that the Plan does or could, following modification, meet the basic conditions and legal requirements, the Plan must be taken to referendum. This decision must be made within 5 weeks of the receipt of the Examiner's report.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The Council is not bound by the Examiner's recommendations and is able to make a decision which differs from that recommended by the Examiner.
- 2.2 As outlined above, the Council is required by the legislation to make its own decision regarding whether the draft neighbourhood plan meets or could meet, following modification, the basic conditions and legal requirements.
- 2.3 While the Council is not bound by the Inspector's recommendations a failure to accept them without good reason runs the risk of legal challenge and/or

intervention by the Minister for Housing, Communities and Local Government.

#### Deciding the Plan meets the basic conditions and legal requirements

- 2.4 The Council could therefore decide the neighbourhood plan meets the basic conditions and legal requirements.
- 2.5 It is not considered that this is an alternative available to the Council as officers consider that the draft Isle of Dogs Neighbourhood Plan, as drafted, does not meet the basic conditions and legal requirements for reasons we provided in our consultation responses to the draft Plan and at the hearing during the examination.

#### Making modifications to the Plan to meet the basic conditions and legal requirements

- 2.6 The Council could also seek to make modifications to the draft Plan, so that it could meet the basic conditions and legal requirements.
- 2.7 It is not considered that this is a suitable alternative as officers agree that the fundamental flaw identified by the Examiner and the cumulative nature of the policy drafting concerns he has raised, mean that the NDP cannot be modified sufficiently to meet the basic conditions.

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

- 3.1 This report provides an assessment of the Isle of Dogs Neighbourhood Plan Examiner's Report recommendations and the Council's considerations of whether the Plan meets, or could meet following modification, the basic conditions and legal requirements.
- 3.2 The content of this report is as follows:
- Section 4: provides an introduction to Neighbourhood Planning;
  - Section 5: outlines the relevant legislative framework and guidance;
  - Section 6: provides a background to the Isle of Dogs Neighbourhood Plan Examination; and
  - Section 7: details the Council's assessment of the Isle of Dogs Neighbourhood Plan Examiner's Report and whether the Plan meets, or could meet following modification, the basic conditions and legal requirements.

### **4. INTRODUCTION TO NEIGHBOURHOOD PLANNING: A COMMUNITY LED PROCESS**

- 4.1 The Localism Act 2011 amended the Town and Country Planning Act (TCPA) 1990 to make provision for neighbourhood planning, which gives communities direct power to develop a shared vision for their neighbourhood and shape the

development and growth of their local area. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.

- 4.2 The legislative provisions concerning neighbourhood planning within the TCPA 1990 are supplemented by the Neighbourhood Planning (General) Regulations 2012 (as amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015) and the Neighbourhood Planning (Referendum) Regulations 2012.
- 4.3 Neighbourhood planning provides communities with the ability to prepare a NDP and/or NDO, in areas designated by the Council on application as a neighbourhood area. Neighbourhood planning powers may only be exercised by bodies authorised by the legislation.
- 4.4 NDPs set out policies in relation to the development and use of land in all or part of a defined neighbourhood area and may include site allocations, or development principles, for allocated sites. They may also include character appraisals and seek to establish community facilities and/or identify areas for public realm improvements.
- 4.5 Both NDPs and NDOs need to be in general conformity with the strategic policies of the Council's Development Plan: the Core Strategy (2010) and Managing Development Document (2013) and the London Plan (2016).
- 4.6 A NDP that has been 'made' in accordance with the relevant legislative provisions forms part of the Council's statutory 'Development Plan' and, as such, will be accorded full weight when determining planning applications in the neighbourhood area. NDPs will form a new spatial layer to the Council's planning policy and guidance.
- 4.7 NDP policies are developed by a neighbourhood forum through consultation with stakeholders in their relevant neighbourhood area and through engagement with Council Officers. Proposed NDP policies must be supported by an up-to-date evidence base to ensure that they are reasonable, sound and justified. Before the NDP is 'made' it must be subject to pre-submission publicity and consultation, submitted to the Council for a legal compliance check, publicised for consultation, submitted for independent examination, found by the independent examiner to meet the basic conditions specified in the legislation, and passed at a referendum.

### **Community Infrastructure Levy**

- 4.8 The Community Infrastructure Levy Regulations 2010, as amended by the Community Infrastructure Levy (Amendment) Regulations 2013 ("the CIL Regulations") were supplemented by the Community Infrastructure Levy Guidance Note, published by the Government's PPG on 6 March 2014.

- 4.9 The CIL Regulations, as explained by the PPG, make provision for how CIL receipts may be used in relation to neighbourhood planning in those areas which have Parish Councils and those which do not. Tower Hamlets does not have any Parish Councils and, as such, the Council retains the revenue generated by CIL.
- 4.10 The Community Infrastructure Levy PPG (Ref ID: 25) states (at paragraph 072) that: "... In England, communities that draw up a neighbourhood plan or neighbourhood development order (including a community right to build order), and secure the consent of local people in a referendum, will benefit from 25 per cent of the levy revenues arising from the development that takes place in their area. This amount will not be subject to an annual limit. ..."
- 4.11 Therefore, where a NDP or NDO has been adopted, the Council is required to consult with the local community as to how this 25 per cent proportion of CIL receipts will be spent. Irrespective of this regulation, the Cabinet in December 2016, agreed to undertake this for all areas of the borough whether or not an NDP or NDO has been adopted.

## **5 NEIGHBOURHOOD DEVELOPMENT PLANS: RELEVANT LEGISLATION AND GUIDANCE**

- 5.1 This section outlines the relevant legislative framework and guidance as they relate to the consideration by the local authority of the recommendations made by the Examiner and the draft Neighbourhood Plan.

### **Consideration by authority of recommendations made by examiner**

- 1.1 The Town and Country Planning Act 1990 (TCPA 1990) Schedule 4B paragraph 12 states that where an examiner has made a report under paragraph 10 TCPA 1990 Schedule 4B, the Council must:
- (a) consider each of the recommendations made by the report (and the reasons for them), and
  - (b) decide what action to take in response to each recommendation.
- (3) The authority must also consider such other matters as may be prescribed.
- (4) If the authority are satisfied—
- (a) that the draft order meets the basic conditions mentioned in paragraph 8(2), is compatible with the Convention rights and complies with the provision made by or under sections 61E(2), 61J and 61L, or
  - (b) that the draft order would meet those conditions, be compatible with those rights and comply with that provision if modifications were made to the draft order (whether or not recommended by the examiner),

a referendum in accordance with paragraph 14, and (if applicable) an additional referendum in accordance with paragraph 15, must be held on the making by the authority of a neighbourhood development order.

(5) The order on which the referendum is (or referendums are) to be held is the draft order subject to such modifications (if any) as the authority consider appropriate.

(6) The only modifications that the authority may make are—

- (a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),
- (b) modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights,
- (c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,
- (d) modifications specifying a period under section 61L(2)(b) or (5), and
- (e) modifications for the purpose of correcting errors.

(10) In any case where the authority are not satisfied as mentioned in subparagraph (4), they must refuse the proposal.

(11) The authority must publish in such manner as may be prescribed—

- (a) the decisions they make under this paragraph,
- (b) their reasons for making those decisions, and
- (c) such other matters relating to those decisions as may be prescribed.

(12) The authority must send a copy of the matters required to be published to—

- (a) the qualifying body, and
- (b) such other persons as may be prescribed.

- 1.2 TCPA 1990 Schedule 4B paragraph 13 states that If the local planning authority propose to make a decision which differs from that recommended by the examiner, and the reason for the difference is (wholly or partly) as a result of new evidence or a new fact or a different view taken by the authority as to a particular fact, the authority must notify prescribed persons of their proposed decision (and the reason for it) and invite representations. If the authority considers it appropriate to do so, they may refer the issue to independent examination.

### **Considering the draft Neighbourhood Plan**

- 1.3 The Independent Examiner and the Council, once it has received the Examiner's Report, must consider whether making the plan meets the basic conditions and complies with certain legal requirements. These are outlined below.

- 1.4 The Basic Conditions (as outlined in paragraph 8(2) of Schedule 4B to the TCPA 1990 [as amended]), are:
- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make [the Plan],
  - (b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make [the Plan],,
  - (c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make [the Plan],,
  - (d) the making of [the Plan] contributes to the achievement of sustainable development,
  - (e) the making of [the Plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
  - (f) the making of [the Plan] does not breach, and is otherwise compatible with, EU obligations, and
  - (g) prescribed conditions are met in relation to [the Plan] and prescribed matters have been complied with in connection with the proposal for [the Plan].
- 1.5 Only one further Basic Condition has been prescribed under paragraph 8(2)(g), as follows: “The making of the Neighbourhood Development Plan is not likely to have a significant effect on a European site...or a European Off-Shore Marine site...(either alone or in combination with other plans or projects)”.
- 1.6 The legal requirements [provisions] (as made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004) are:
- i) it has been prepared and submitted for examination by a qualifying body, for an area that has been properly designated by the local planning authority;
  - ii) it sets out policies in relation to the development and use of land;
  - iii) it specifies the period during which it has effect;
  - iv) it does not include provisions and policies for ‘excluded development’;
  - v) it is the only neighbourhood plan for the area and does not relate to land outside the designated neighbourhood area;

## **2 BACKGROUND TO THE ISLE OF DOGS NEIGHBOURHOOD PLAN**

- 2.1 This section outlines the key statutory stages in the production of the draft Isle of Dogs Neighbourhood Plan.

- 2.2 The Isle of Dogs Neighbourhood Area and Neighbourhood Forum were designated by Tower Hamlets Council in Cabinet on 5<sup>th</sup> April 2016, with the decision notice published on the 19<sup>th</sup> April 2016.
- 2.3 Following the development of the draft Isle of Dogs Neighbourhood Plan, the Isle of Dogs Neighbourhood Forum ran a public consultation from 8<sup>th</sup> March 2017 to 19<sup>th</sup> April 2017, as required by Regulation 14 of the Neighbourhood Planning (General) Regulations 2012. It is noted that the Consultation Statement states that the consultation period was not formally closed and they continued to receive and include comments after the formal end date.
- 2.4 The Isle of Dogs Neighbourhood Forum submitted the draft Neighbourhood Plan and accompanying documents to the London Borough of Tower Hamlets on the 25<sup>th</sup> October 2017, in accordance with Regulation 15 of the Neighbourhood Planning (General) Regulations 2012. Following an initial review by the Council, further information regarding consultation and basic conditions were requested and an updated Basic Conditions Statement and Consultation Statement were received on the 9<sup>th</sup> of November 2017.
- 2.5 On the 19<sup>th</sup> December 2017, Cabinet agreed that the submission of the draft Isle of Dogs Neighbourhood Plan under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 met the statutory requirements set out in paragraph 6 of Schedule 4B of the TCPA 1990 and therefore should be publicised under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 and taken forward to Examination. It was also agreed in Cabinet that the Council should proceed to appoint an independent Examiner with the consent of the neighbourhood forum in accordance with Paragraph 6 of Schedule 4B of the TCPA 1990 (as amended).
- 2.6 It was noted in the Cabinet report that this decision was only to consider the draft plan against the statutory requirements set out in paragraph 6 of Schedule 4B of the TCPA 1990. In particular, the Council had to be satisfied that a basic condition statement has been submitted but it is not required to consider whether the draft plan meets the basic conditions. It is only after the independent examination has taken place and after the examiner's report has been received that the Council comes to its formal view on whether the draft NDP meets the basic conditions (Planning Practice Guidance Neighbourhood Planning Paragraph 53).
- 2.7 As required by regulation 16 of the Neighbourhood Planning (General) Regulations 2012, the second consultation, run by the Council, was held from 11<sup>th</sup> January 2018 to 22<sup>nd</sup> February 2018.
- 2.8 In March 2018, the Council, with the consent of the Isle of Dogs Neighbourhood Forum appointed John Parmiter FRICS FRSA MRTPI as the Independent Examiner. He commenced his examination on the 9<sup>th</sup> April 2018. As outlined in the Examiner's report (appendix 1), 'the default position is that neighbourhood plan examinations are conducted by written representations. However, in this case I decided that there were a number of issues that warranted clarification and/or oral evidence at a public hearing'. The public hearing was held on the 10<sup>th</sup> May 2018. The final examiner's report was

received by the Council and Forum on the 7<sup>th</sup> June 2018 and published on the Council's website on the 11<sup>th</sup> of June 2018.

### **3 CONSIDERATION OF THE ISLE OF DOGS NEIGHBOURHOOD PLAN EXAMINER'S REPORT AND ASSESSMENT**

3.1 Paragraph 10 of the TCPA 1990 requires the Examiner to make one of the following recommendations:

- i) that the draft plan is submitted to a referendum, or
- ii) that modifications specified in the report are made to the draft plan and that the draft order as modified is submitted to a referendum, or
- iii) that the proposal for the plan is refused.

3.2 The Isle of Dogs Neighbourhood Plan Examiner has recommended that the proposed neighbourhood plan (NDP) is refused and should not proceed to referendum.

#### **Basic Conditions**

3.3 The summary on page 3 of the Examiner's report (appendix 1) states that the Examiner has concluded that the NDP 'does not meet the Basic Conditions'. Later in the report, the Examiner states that he does not consider the NDP to breach or be incompatible with the European Convention on Human Rights or other EU obligations (basic conditions (f) and (g)) (paragraph 2.6) and that the NDP is in general conformity with the strategic policies of the development plan (basic condition (d)) and seeks to promote sustainable development (basic condition (e)) (paragraph 3.5). The Examiner does not reference basic conditions (b) and (c). It is therefore understood that the Examiner considers the NDP fails to meet the basic condition that it would be appropriate to make the NDP, having regard to national policies and advice contained in guidance by the Secretary of State (basic condition (a)).

3.4 In addition to the summary on page 3, the basis for the Examiner's conclusion that the NDP fails to meet basic condition (a), is outlined in paragraphs 4.1, 4.15, 16.1 and 16.2 of the Examiner's report. The Examiner's reasons can be summarised as relating to two main concerns: Evidence and Policy Drafting.

#### Evidence

3.5 The infrastructure evidence and in particular the Development Infrastructure Funding Study, produced by the GLA and published on the 9<sup>th</sup> May 2018 (the evening before the public hearing), was the subject of a detailed discussion at the public hearing and in subsequent exchanges with the Examiner. This is outlined in detail in paragraphs 4.2 – 4.9 in the Examiner's report.

3.6 The Examiner concludes in paragraph 4.10 that 'the infrastructure evidence is simply not robust or proportionate to support a key policy in the plan, has not been consulted on (nor could have been) and so the plan, and Policy D1 in particular, cannot in my view, meet the Basic Conditions'. This he considers to

be a 'fundamental flaw' in the NDP. The Examiner also raises concerns that there is insufficient evidence to support policies ES1 (paragraph 8.2) and 3D2 (paragraph 10.3).

- 3.7 In this regard the Examiner considers that the NDP does not have sufficient regard to paragraph 040 of the Neighbourhood Planning guidance, which requires 'proportionate robust evidence...[to] support the choices made and the approach taken'.

#### Policy Drafting

- 3.8 The Examiner raises a number of concerns with the drafting of all of the proposed policies, which he considers would require addressing through modifications to the policies, in order to meet basic condition (a).
- 3.9 In light of the Examiner's recommendation for the plan to be refused and not proceed to referendum, he does not recommend specific policy drafting modifications, however as he notes in paragraph 4.16, he recognises providing 'indication[s]' of this conclusions could be helpful if the Forum wish to take forward their ' "long" plan'.
- 3.10 He raises two general concerns: the first regarding the scale of development the policies apply to and the second the role for the Forum specified in many of the policies (see paragraphs 4.17 and 4.19).
- 3.11 He also raises policy specific concerns. In particular he states policy D1 would need to be revised to meet basic condition (a). In particular to 'meet the requirements of para 173 of the [National Planning Policy] Framework and the CIL Regs (122)' (paragraph 5.3) and that policies ES1 and AQ1 would require significant revisions to meet basic condition (a) (see paragraphs 8.2 and 14.2). Other policies (CC1 – 3 and SD1) would require some revisions to meet basic condition (a) (see paragraphs 12.2 to 13.2).

#### Council's Assessment

- 3.12 The Council agrees with the Examiner's assessment that the NDP does not breach nor is incompatible with the European Convention on Human Rights or other EU obligations (basic conditions (f) and (g)) and that the NDP is in general conformity with the strategic policies of the development plan (basic condition (d)). The Council agrees that basic conditions (b) and (c) are not considered applicable to the contents of the NDP.
- 3.13 The Council however, maintains its concern regarding whether the NDP seeks to promote sustainable development (basic condition (e)), in particular in relation to policy D1. This was raised by the Council in its representations to both the regulation 14 and regulation 16 consultations on the draft NDP. The Examiner's report (paragraph 5.3) states 'the way the first part [of D1] is framed it would be interpreted as an embargo until a range of factors, likely to be outside the control of the developer are resolved'. The Council considers that a policy which acts as an embargo on development does not seek to

promote sustainable development, as defined by the National Planning Policy Framework.

- 3.14 The Council agrees with the Examiner's assessment that there is insufficiently robust and proportionate evidence to support the NDP and that all the policies require modification in order to meet basic condition (a). The Council raised a number of policy drafting concerns and modification recommendations related to the basic conditions in its representations to both the regulation 14 and regulation 16 consultations on the draft NDP, many of which have been reflected in the Examiner's report.

### **Legal Compliance**

- 3.15 The summary on page 3 also states that the NDP could, subject to certain modifications, meet the legal requirement for the policies to relate to the development and use of land (legal requirement (ii)). Paragraphs 2.9 and 4.14 clarify that these modifications would be for a number of the policies to be deleted or removed to an annex, these being CIL1-4, ER1-8, GR1, 3D1-2 and BBA1 – 3. The Examiner considers that these policies do not sufficiently relate to the development and use of land and instead constitute 'Community Actions' (paragraph 2.9) and should, in accordance with paragraph 041 of the Neighbourhood Planning guidance, not be included in the body of the NDP.

### Council's Assessment

- 3.16 The Council agrees with the Examiner's conclusions regarding the need for policies CIL1-4, ER1-8, GR1, 3D2 and BBA2 – 3 to be deleted or removed to an annex in order for the DP to meet the legal requirements. This was the Council's view on these policies raised by the Council in its representations to both the regulation 14 and regulation 16 consultations on the draft NDP.
- 3.17 The Council however, as indicated in its representations to both the regulation 14 and regulation 16 consultations on the draft NDP, does still consider that 3D2 and BBA1 could be legally compliant, land use, development management policies if suitably modified and evidenced. It is considered that the Examiner allows for this possibility in relation to 3D2 in paragraph 10.3.

### **Conclusion**

- 3.18 The Council is in broad agreement with the Examiner's conclusions in relation to the basic conditions and legal compliance in respect of each of the policies and the NDP as a whole and therefore with his recommendation that the plan should not proceed to referendum.
- 3.19 The Examiner is clear that he considers the lack of robust and proportionate evidence to support the plan is a 'fundamental flaw' and has made suggestions for all policies in the Plan to be modified (many of them substantially) and/or deleted or moved to an annex.
- 3.20 It is considered that due to the fundamental flaw identified by the Examiner and the cumulative nature of the policy drafting concerns he has raised, it

would not be possible to overcome these issues through modifications to the NDP and therefore the NDP must be refused and cannot proceed to referendum.

- 3.21 The Council will continue to provide support to the Isle of Dogs Neighbourhood Forum as they consider their next steps.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 It is not considered that this report will have any equalities implications. This report seeks Cabinet's agreement to refuse the progression of the Isle of Dogs Neighbourhood Plan to referendum. As such no new policy or proposal will be implemented as a result of this change, and therefore an equalities analysis is not required.
- 4.2 It should be noted that the NDP, when submitted to the Council in October 2017 was accompanied by a Basic Conditions Statement, which included an assessment of whether the Plan is compatible with the Human Rights Act and other relevant National and European obligations. In discussion with the Council the Neighbourhood Forum also undertook an Equalities Impact Assessment of the draft Isle of Dogs Neighbourhood Plan. This was included in the Basic Conditions Statement.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
- 5.2 The Council is required by legislation to pay for the costs of the Examination (primarily the costs of the Examiner). This hourly rate is the same for all Examiners. In order to manage the costs a time estimate was included in the contract, requiring any greater costs to be agreed with the Council. No further costs were required.
- 5.3 The Isle of Dogs Neighbourhood Plan has been subject to a screening assessment under the Strategic Environmental Assessment (SEA) Regulations and Conservation of Habitats and Species Regulations. This assessment deemed that neither a SEA nor a HRA was required.

- 5.4 The primary risk relating to this decision would arise from a failure to make a decision within the statutory timeframe of 5 weeks of receipt of the Examiner's report. If a decision is not made within this timeframe the Secretary of State has the power to intervene. A further risk could arise if the Council did not follow the Examiner's recommendations. This is because, whilst the Council is not bound by the Inspector's recommendations, a failure to accept them without good reason runs the risk of legal challenge and/or intervention by the Minister for Housing, Communities and Local Government.

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 This report provides an update for the Mayor in Cabinet on the recent public examination of the Isle of Dogs Neighbourhood Development Plan, and in accordance with the examiner's recommendations seeks confirmation that the plan proposal should be refused and not proceed to a referendum.
- 6.2 The Council has a duty to provide support and advice to Area Forums and this will continue while the options available to the Isle of Dogs Neighbourhood Forum are considered. The additional administration costs, including the expenditure that has already been incurred in undertaking the public consultation process and the examination of the Neighbourhood Plan, are being met from within existing budgets. Funding has historically been made available by the MHCLG to assist with these costs, subject to an annual maximum sum dependent upon the number of determinations within the particular financial year. Since 1<sup>st</sup> April 2016 however, the funding arrangements have been changed so that they are no longer year specific. Local planning authorities are able to claim £5,000 for each of the first five area designations that it makes, with a further £5,000 for each of the first five forum designations. As a consequence, the Council has received £10,000 towards the costs of the Isle of Dogs Planning Area and Forum.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 Neighbourhood planning is part of the Government's initiative to empower local communities to bring forward planning proposals at a local level, as outlined in Section 116 of the Localism Act 2011. That Act (which amended the TCPA 1990 to make provision for neighbourhood planning), and the subsequent 2012 Regulations confer specific functions on an LPA in relation to neighbourhood planning.
- 11.2 Together this legislation sets out the examination process of a NDP, and the steps the Council must take following independent examination and receipt of the report of the examiner. These requirements (primarily set out in Regulations 17A to 19 of the 2012 Regulations and paragraphs 7 to 13 of Schedule 4B of the TCPA 1990) are set out in substantial detail in Section 5 of this report and as such are not duplicated here.

- 11.3 In accordance with the requirement under paragraph 12 of Schedule 4B of the TCPA 1990, officers have demonstrated at section 7 of this report that they have had proper regard to the conclusions reached by the Isle of Dogs Neighbourhood Plan Examiner. Through their analysis, officers have decided to follow the recommendation by the Examiner and recommend to the Mayor in Cabinet that the plan proposal be refused and not proceed to referendum. It is noted that under Regulation 17A of the 2012 Regulations the Council has 5 weeks from the date they receive the report of the Examiner to decide what action to take in respect of their recommendations. Officers confirm at paragraph 1.1 of this report that the Examiner's report was received on 7 June 2018. If a decision is not reached within the timeframe then the Secretary of State may intervene and exercise the functions of the Council in its decision whether or not to accept the recommendations of the Examiner.
- 11.4 Pursuant to section 9D of the Local Government Act 2000 all functions of an authority are executive functions unless they are specified as not in either the 2000 Act or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). Whilst some Planning functions cannot be the responsibility of the Executive, the decision whether a neighbourhood plan meets the statutory requirements and should proceed to referendum is not a specified function. This is therefore a decision for the Executive.
- 11.5 If the Isle of Dogs Neighbourhood Plan is refused the Council is required under paragraph 12(10) of Schedule 4B of the TCPA 1990 to publish this decision, their reasons for making this decision and such other matters relating to that decision as may be prescribed under the legislation. The Council must send a copy of the matters to be published to the Isle of Dogs Neighbourhood Forum and any other relevant persons.
- 11.6 When making decisions on a NDP 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 (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty.
- 11.7 The Isle of Dogs Neighbourhood Forum undertook an Equalities Impact Assessment of the draft NDP, when it was first submitted to the Council, which was reviewed by officers and an Equality Analysis Quality Assurance Checklist completed, which concluded that no further action was recommended at that stage. However, as this report recommends the refusal of the NDP there should be no change in policy and as such, an equalities analysis is not required.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Reports**

- Isle of Dogs Neighbourhood Planning Forum application report to Cabinet on 5<sup>th</sup> April 2016
- Isle of Dogs Neighbourhood Planning Area application report to Cabinet on 5<sup>th</sup> April 2016
- Neighbourhood Planning: Isle of Dogs Neighbourhood Plan - 2017 to 2031 - Legal Compliance and Examination Stage report to Cabinet on 19<sup>th</sup> December 2017

### **Appendices**

- Appendix 1- Isle of Dogs Neighbourhood Development Plan Report of Examination

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

- None

### **Officer contact details for documents:**

N/A