


COUNCIL	 TOWER HAMLETS
19 May 2021	
Report of: Ann Sutcliffe, Corporate Director, Place	Classification: Unrestricted
Isle of Dogs Neighbourhood Plan – Post-Referendum Adoption	

Lead Member	Councillor Eve McQuillan, Cabinet Member for Planning and Social Inclusion
Originating Officer(s)	Steven Heywood, Plan-Making Officer
Wards affected	Island Gardens; Blackwall and Cubitt Town; Canary Wharf

Executive Summary

The examiner's report on the Isle of Dogs Neighbourhood Plan was received by the Council and the Isle of Dogs Neighbourhood Forum on 14 April 2020, and recommended that the neighbourhood plan be sent to referendum with a number of modifications. The Council accepted this referendum and, after a delay due to the pandemic, the referendum was held on 6 May 2021. Following the outcome of the referendum, the Council must make a decision on whether to formally 'make' the neighbourhood plan and adopt it as part of the development plan for the borough.

Recommendations:

The Council is recommended:

1. To note the result of the Isle of Dogs Neighbourhood Plan referendum and adopt the neighbourhood plan, in line with the Planning and Compulsory Purchase Act 2004, Section 38A.
2. To agree that plan is not implemented until 1 July 2021.

1. REASONS FOR THE DECISIONS

- 1.1 The Isle of Dogs Neighbourhood Plan was submitted to the Council, consulted on, and independently examined in line with the provisions in the Town and Country Planning Act 1990, Schedule 4B and the Neighbourhood Planning (General) Regulations 2012. The recommendation of the independent examiner was that the neighbourhood plan be sent to referendum with a number of modifications. This recommendation was accepted by the Council.

- 1.2 The Isle of Dogs Neighbourhood Plan Referendum was held on 6 May 2021. Voters were asked the question: “Do you want the London Borough of Tower Hamlets to use the neighbourhood plan for the Isle of Dogs Neighbourhood Planning Area to help it decide planning applications in the neighbourhood area?”.
- 1.3 The result of the referendum was that 7,874 people voted ‘yes’ and 1,264 voted no, with 401 rejected ballots. This means that the neighbourhood plan was supported by 86.2% of the eligible votes cast.
- 1.4 The Planning and Compulsory Purchase Act 2004, Section 38A(4) requires that a local planning authority must formally make a neighbourhood plan if more than half of those voting in a relevant referendum approve the neighbourhood plan. The neighbourhood plan must be made as soon as reasonably practicable after the referendum, and within 8 weeks of the day after the referendum.
- 1.5 The exception to the 8 week timeline for making the neighbourhood plan is where a legal challenge has been raised in relation to the conduct of the referendum.
- 1.6 By making the neighbourhood plan, it will be formally adopted as part of the development plan for the borough, and will be used in decision-making on all relevant planning applications.

2. ALTERNATIVE OPTIONS

- 2.1 Under the Planning and Compulsory Purchase Act 2004, Section 38A(6), a local planning authority can decline to make a neighbourhood plan following a successful referendum only if it considers the neighbourhood plan to breach, or be otherwise incompatible with, any EU obligations or any of the Convention rights under the Human Rights Act 1998. The reference to EU obligations can here be understood as those EU obligations that were transferred into UK law and have not been repealed since the UK left the EU.
- 2.2 The decision to send the neighbourhood plan to a referendum was taken as an Individual Mayoral Decision (due to a prescribed time period of 5 weeks between a local planning authority receiving the final examiner’s report and making a decision on its recommendations) on 12 May 2020. The report accompanying this decision assessed whether the neighbourhood plan, as modified, would meet the basic conditions and legal obligations required of neighbourhood plans under the relevant legislation – which include conformity with EU obligations and Convention rights. The report concluded that it did.
- 2.3 There have been no further modifications to the neighbourhood plan since that decision, and it is therefore considered that the assessment from the previous report still applies, and the neighbourhood plan is not incompatible with any EU obligations or Convention rights.

- 2.4 Given this situation, while deciding not to make the neighbourhood plan is a potential alternative option, it is not the recommended option. Taking this option without strong justification as to why the plan fails to comply with EU obligations and Convention rights would open the Council up to intervention by the Secretary of State to force the neighbourhood plan to be made.

3. DETAILS OF THE REPORT

- 3.1 This report provides an assessment of the referendum and adoption of the Isle of Dogs Neighbourhood Plan.

- 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 an assessment of the referendum and adoption of the Isle of Dogs Neighbourhood Plan

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 Neighbourhood Development Plan (NDP) and/or Neighbourhood Development Order (NDO), in areas designated by the LPA on application as a neighbourhood area. Neighbourhood planning powers may only be exercised by bodies authorised by the legislation. In a neighbourhood area where there is a parish council, only a parish council may make proposals for a NDP or NDO. In neighbourhood areas without a parish council, only a body designated by the LPA as a neighbourhood forum may bring forward proposals for that neighbourhood area.
- 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. NDOs allow for planning permission to be granted in the circumstances specified and exempt certain types of development, or development in certain areas, or on particular sites, from the usual requirement to apply to the LPA for a grant of planning permission.

- 4.5. Both NDPs and NDOs need to be in general conformity with the strategic policies of the Council's Development Plan: the Tower Hamlets Local Plan (2020) and the London Plan (2021).
- 4.6. An NDP that has been 'made' in accordance with the relevant legislative provisions forms part of the Council's statutory Development Plan (comprising the Local Plan and London 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 LPA 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. Following the Neighbourhood Planning Act 2016, an NDP must be given some weight in determining planning applications once it has passed examination – even before it has 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 DCLG on 26 April 2013. The 2013 guidance was replaced by the Government's PPG on 6 March 2014.
- 4.9. The CIL Regulations, as explained by the Planning Practice Guidance (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 currently does not have any Parish Councils and, as such, the Council retains the revenue generated by CIL.
- 4.10. The Community Infrastructure Levy PPG states (at paragraph 145) that in areas where there is a 'made' NDP or NDO in place, 25% of CIL collected in the neighbourhood area should be spent in that area. Where there is a parish council in place, the money should be passed to the parish council for them to spend directly. Paragraph 146 states that "if there is no parish or town council, the charging authority will retain the levy receipts but should engage with the

communities where development has taken place and agree with them how best to spend the neighbourhood funding”.

- 4.11. Therefore, where an NDP or NDO has been adopted, the Council is required to consult with the local community as to how this 25% 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 making of NDPs following a referendum.
- 5.2. In accordance with Section 38A(4) of the Planning and Compulsory Purchase Act (PCPA) 2004, a local planning authority:
- (a) Must make a neighbourhood development plan [...] if in each applicable referendum under [Schedule 4B of the TCPA 1990] more than half of those voting have voted in favour of the plan, and*
 - (b) If paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held and, in any event, by such date as may be prescribed.*
- 5.3. Section 38A(6) of PCPA 2004 adds that:
- The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the plan would breach, or would otherwise be incompatible with, and EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).*
- 5.4. The Planning Policy Guidance on Neighbourhood Planning issued by the government notes four particular EU obligations, as incorporated into UK law, that may be of particular relevance to neighbourhood planning. These are the Strategic Environmental Assessment Directive; the Environmental Impact Assessment Directive; the Habitats Directive; and the Wild Birds Directive (reference 41-078-20140306). The Environmental Impact Assessment Directive would apply to neighbourhood development orders aimed at granting planning permission on a specific site; while the Strategic Environmental Assessment Directive would apply to plans for a wider area such as the Isle of Dogs Neighbourhood Plan. Although the UK has now left the EU, the requirements of these directives are still incorporated into UK law at this time.
- 5.5. The Neighbourhood Planning (General) Regulations 2012 prescribe a time limit for making a neighbourhood plan following a referendum. Regulation 18A (as inserted by the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016) states:

(1) The date prescribed for the purposes of Section 38A(4)(b) of the 2004 Act is the date which is the last day of the period of 8 weeks beginning with the day immediately following that on which the last applicable referendum is held.

- 5.6. This time limit does not apply if a legal challenge is brought in relation to the decision to hold a referendum or around the conduct of the referendum.
- 5.7. Following a decision to make a neighbourhood plan, the local planning authority must publish (and send to the qualifying body and any other parties who asked to be informed of the decision) a decision statement setting out the reasons for the decision. This is set out under PCPA Section 38A(9) and (10) and Regulation 19 of the Neighbourhood Planning (General) Regulations 2012.

6. NEIGHBOURHOOD DEVELOPMENT PLANS: MAKING THE ISLE OF DOGS NEIGHBOURHOOD PLAN

- 6.1. This section provides an assessment of the proposal to make the Isle of Dogs Neighbourhood Plan, in relation to the legislation outlined above.

Outcome of the Referendum

- 6.2. The referendum on the Isle of Dogs Neighbourhood Plan was held on 6 May 2021. The referendum area was the same as the Neighbourhood Planning Area, and all registered voters living within the Neighbourhood Planning Area were able to vote. The referendum asked the question: “Do you want the London Borough of Tower Hamlets to use the neighbourhood plan for the Isle of Dogs Neighbourhood Planning Area to help it decide planning applications in the neighbourhood area?”.
- 6.3. 9,539 votes were cast in the referendum, from an electorate of 25,882 people, giving a turnout of 36.99%. Of those voting, 7,874 voted ‘yes’, 1,264 voted ‘no’, and 401 had their ballot papers rejected. Of the eligible votes cast, 86.2% were in favour of using the neighbourhood plan to help decide planning applications for the neighbourhood area.

EU Obligations and Convention Rights

- 6.4. The question of whether the Isle of Dogs Neighbourhood Plan is compatible with EU obligations and other legal obligations such as Convention rights was considered in the report accompanying the Individual Mayoral Decision of 12 May 2020 that agreed to send the neighbourhood plan to referendum.
- 6.5. It was noted that the examiner’s report on the neighbourhood plan stated that “I have concluded that, subject to certain modifications, the plan would meet the legal requirements”. The IMD report agreed with the examiner’s assessment that the neighbourhood plan would meet the legal conditions for neighbourhood plans if the proposed recommendations were implemented.

These recommended changes were implemented, and the modified version of the neighbourhood plan was the one considered at the referendum.

- 6.6. Requirements related to the Strategic Environmental Assessment, Habitats, and Wild Birds Directives were covered by a Strategic Environmental Assessment and Habitats Regulation Assessment Screening Report prepared by the Council in July 2019. This report found that, given the proposals in the Isle of Dogs Neighbourhood Plan, a full Strategic Environmental Assessment or Habitats Regulation Assessment would not be required.
- 6.7. No changes of circumstance have taken place since the decision of 12 May 2020 to suggest that the neighbourhood plan no longer meets its legal obligations.

Deadline for Decision

- 6.8. The referendum on the neighbourhood plan was held on 6 May 2021. Under the requirements of the Neighbourhood Planning (General) Regulations 2012 (as amended), the decision on whether to make the neighbourhood plan should be taken by 1 July 2021.

Conclusion and Publicity

- 6.9. Due to the above assessment, it is recommended that the Isle of Dogs Neighbourhood Plan should be made, and formally adopted as part of the development plan for the borough. The neighbourhood plan was supported by more than half of those voting in the referendum, with 86.2% in favour of using the plan to help decide planning applications in the neighbourhood planning area.. The neighbourhood plan does not breach any EU or other legal obligations.
- 6.10. Following the making of the neighbourhood plan, it will be accorded full weight in planning decisions made for land within the Isle of Dogs Neighbourhood Planning Area. A copy of the neighbourhood plan and a map of the neighbourhood planning area have been attached to this report as appendices.
- 6.11. If the decision is taken to make the Isle of Dogs Neighbourhood Plan and formally adopt it as part of the development plan for the borough, a decision statement will be published on the Council's website and distributed to the Isle of Dogs Neighbourhood Forum and any other interested parties.

7. EQUALITIES IMPLICATIONS

- 7.1. Officers have used the Council's Equality Impact Assessment Screening tool to consider impacts on people with the protected characteristics outlined in the Equalities Act 2010. It is considered that the proposals in this report do not have any adverse effects on people who share the protected characteristics and no further action is required.
- 7.2. The Isle of Dogs Neighbourhood Forum prepared an equalities impact assessment of the proposals in the neighbourhood plan, and included this in the Basic Conditions Statement dated October 2019, which formed part of the neighbourhood plan submission. The Basic Conditions Statement was part of the submission package considered by Cabinet on 18 December 2019; part of the Regulation 16 consultation on the neighbourhood plan held in January and February 2020 (see paragraph 8.2 below); and was considered by the examiner as part of the examination of the neighbourhood plan held between February and April 2020. No concerns were raised about the equalities impact assessment at any of these stages.

8. OTHER STATUTORY IMPLICATIONS

- 8.1. 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.
- 8.2. Consultations: The Isle of Dogs Neighbourhood Plan underwent two stages of formal consultation earlier in the process. The first stage (known as 'Regulation 14' consultation) was held between 3 April and 16 May 2019, and organised by the neighbourhood forum. The responses to this consultation were used by the neighbourhood forum to update the neighbourhood plan, as set out in the Consultation Statement that was submitted alongside the neighbourhood plan for examination. Following the submission of the neighbourhood plan for examination, the Council arranged a second stage of consultation between 9 January and 19 February 2020 (known as 'Regulation 16' consultation). The responses from this consultation were submitted to the independent examiner of the plan for consideration as part of the examination process.
- 8.3. Environmental Implications: There is a statutory requirement to determine whether neighbourhood plans require a Strategic Environmental Assessment (SEA) or Habitats Regulations Assessment (HRA), and for such assessments to be undertaken if necessary. The Council undertook an SEA/HRA screening of the draft neighbourhood plan before submission for examination, and concluded that a full SEA or HRA was not required. This decision was published by the Council in July 2019.

9. COMMENTS OF THE CHIEF FINANCE OFFICER

- 9.1. There are no material financial implications emanating from this report which seeks the adoption of the Isle of Dogs neighbourhood plan.
- 9.2. Any costs associated with the referendum process and adoption of the plan will be met from within existing revenue budget provision.
- 9.3. There is no Parish Council in place for the Isle of Dogs area. As a result, the CIL regulations 2010 allow the Council to retain any CIL income collected from this area but it must reinvest 25% of this income back into the local community. Should the neighbourhood plan be adopted then this will need to be considered when allocating CIL funding.

10. COMMENTS OF LEGAL SERVICES

- 10.1. Section 38A(4) of the Planning and Compulsory Purchase Act 2004('the 2004 Act') defines a 'neighbourhood development plan' as a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan. Section 38A(4) of the 2004 Act also states that Schedule 4B of the Town and Country Planning Act 1990 ('TCPA 1990') also applies to neighbourhood development plans.
- 10.2. The Isle of Dogs Neighbourhood Plan was submitted to the Council, consulted on, and independently examined in line with the provisions in Schedule 4B of the Town and Country Planning Act 1990, and the Neighbourhood Planning (General) Regulations 2012(as amended).
- 10.3. In accordance with the recommendations in this report and pursuant to paragraph 12(4) and (5) of Schedule 4B of the TCPA 1990, the Council must hold a referendum on the making of a neighbourhood development plan.
- 10.4. Due to the Coronavirus pandemic, all neighbourhood planning referendums scheduled to take place between 16 March 2020 and 5 May 2021 were postponed until 6 May 2021 pursuant to the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020.
- 10.5. Under s38(4) of the 2004 Act, the Council must make a neighbourhood development plan if in any referendum held under Schedule 4B of the TCPA 1990, more than half of those voting have voted in favour of the plan. The Council must make any such plan as soon as reasonably practicable after the referendum is held and no later than the last day of the period of eight weeks beginning with the day immediately following that on which the referendum is

held. This means that the Council will need to formally make the neighbourhood plan by 1 July 2021.

- 10.6. Pursuant to s38(6) of the 2004 Act, if the neighbourhood plan has been approved at the referendum, it will attain the same legal status as a local plan (and other documents that form part of the statutory development plan). At this point it will come into force as part of the statutory development plan and applications for planning permission in this neighbourhood area must be determined in accordance with this development plan, unless material considerations indicate otherwise.
- 10.7. Pursuant to sections 38A(9) and (10) of the PCPA 2004 and regulation 19 of the Neighbourhood Planning (General) Regulations 2012, following a decision to make a neighbourhood plan, the local planning authority must publish (and send to the qualifying body and any other parties who asked to be informed of the decision) a decision statement setting out the reasons for the decision.
- 10.8. If the referendum supports the making of a neighbourhood plan, and following the formal adoption of such plan, the neighbourhood area can benefit from the allocation of 25% of CIL receipts relating to planning permissions granted in the area. The council will hold these funds but will consult with local people on how best to spend the money which could include supporting infrastructure development and addressing any other demands that development places on the area
- 10.9. Under s61(N) of the Town and Country Planning Act 1990, a claim for judicial review questioning anything related to the referendum must be filed before the end of 6 weeks beginning with the day after the day on which the result of the referendum is declared. Deferring the implementation of the neighbourhood plan until after the end of 6 week period for any claim to be filed will provide certainty to both officers and the development industry on the application of the adopted neighbourhood plan.
- 10.10. In terms of any implications of the proposed recommendations arising from the Equality Act 2010 paragraphs 7.1 and 7.2 of this report state that the Council has subjected the recommendations in this report to an Equalities Impact Assessment Screening Tool. It concludes that the proposals in this report do not have any adverse effects on people who share Protected Characteristics as defined in the Equality Act 2010 and no further action is required. Additionally, the Isle of Dogs Neighbourhood Forum prepared and submitted an Equalities Impact Assessment with the Basic Condition Statement dated October 2019, which formed part of the neighbourhood plan submission and which was considered both by the Council and the independent Examiner with no issues being identified. Both documents concluded that no negative equalities impacts would arise from the implementation of the Neighbourhood Plan. The assessments therefore demonstrate that the Council has complied with and discharged the Public Sector Equality Duty in s149 of the Equality Act 2010.

10.11. Paragraph 8.2 of this report sets out the extent of the consultation exercises undertaken and demonstrates a fair and legally robust process.

Linked Reports, Appendices and Background Documents

Linked Report

- Isle of Dogs Neighbourhood Plan Examiner's Report and Referendum, Mayor's Executive Decision Making, Tuesday 12 May 2020 - <https://democracy.towerhamlets.gov.uk/ieListDocuments.aspx?MIId=11486>

Appendices

- Appendix 1: Isle of Dogs Neighbourhood Plan
- Appendix 2: Map of Isle of Dogs Neighbourhood Planning Area

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

- NONE

Officer contact details for documents:

Steven Heywood, Principal Planning Officer, Plan-Making Team