


<p><b>Individual Mayoral Decision</b></p> <p>August 2021</p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Ann Sutcliffe, Corporate Director of Place</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Spitalfields Neighbourhood Plan Examiner's Report and Referendum</b></p>	

<b>Lead Member</b>	<b>Councillor Eve McQuillan, Lead Member for Planning and Social Inclusion</b>
<b>Originating Officer(s)</b>	Steven Heywood, Plan Making Team Marissa Ryan-Hernandez, Strategic Planning Manager
<b>Wards affected</b>	Weavers Spitalfields and Banglatown
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	General Exception Notice published 29 July 2021
<b>Reason for Key Decision</b>	Impact on Wards
<b>Strategic Plan Priority / Outcome</b>	<b>A Great Place to Live</b>

### Executive Summary

The Spitalfields Neighbourhood Plan has been the subject of an independent examination process. On 15 July 2021, the Council and the Neighbourhood Forum received the examiner's final report on the neighbourhood plan, and the Forum has produced a tracked change edit of the plan in line with the recommendations contained in the examiner's report (appendices 1 and 2). The examiner has recommended that the plan meets the basic conditions for proceeding to referendum, subject to the recommended modifications.

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

### Recommendations:

The Mayor is recommended to:

1. Note Appendix 1: Report on Spitalfields Neighbourhood Plan 2020-2035 and Appendix 2: Tracked Changes Version of the Spitalfields

Neighbourhood Plan, and agree with the Examiner's recommendation that the plan meets the basic conditions subject to modifications being made, can therefore proceed to referendum, and that the referendum area should be the same as the designated neighbourhood area.

2. Agree that Appendix 3: Referendum Version of the Spitalfields Neighbourhood Plan should proceed to referendum, with a referendum area that is the same as the designated neighbourhood area, in accordance with Schedule 4B of the Town and Country Planning Act 1990. As the area is designated as a Business Neighbourhood Area, two referendums should be held on the neighbourhood plan – one a residential referendum, and the other a business referendum.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The Spitalfields Neighbourhood Plan has been the subject of an independent examination process. Following receipt of an Examiner's report on 15 July 2021 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 do so 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. 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.
- 2.2 The Council could decide that the plan does not meet the basic conditions and legal requirements, and cannot be modified to do so. This is not considered to be a viable option, as the examiner's recommendation is clear that the plan meets the legal requirements and can be modified to meet the basic conditions. Officers are not aware of any justifiable reason why the plan cannot be modified to meet these requirements, and the Neighbourhood Forum have been willing to accept the examiner's recommended changes.
- 2.3 The Council could decide that the plan meets the basic conditions and legal requirements without the need for the modifications recommended by the examiner. This is also not considered a viable option. The examiner has set out clear reasoning for why the modifications are necessary. A number of the recommendations are small changes that ensure the plan is clear and

consistent with national and London-wide planning policy. In other instances they directly address elements of the plan that council officers had already identified as requiring modification. It would be contradictory for the Council to now claim that its own officers' suggestions, as supported by the examiner, do not need to be implemented.

- 2.4 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 Secretary of State for Housing, Communities and Local Government.

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

- 3.1 This report provides an assessment of the Spitalfields 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 – an introduction to neighbourhood planning
- Section 5 – outline of the relevant legislative framework and guidance
- Section 6 – a background to the Spitalfields Neighbourhood Plan examination
- Section 7 – assessment of the examiner's report and whether the plan meets the basic conditions and legal requirements, or could do so with modification

### **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 An 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) ('the CIL Regulations') are supplemented by the Government's Planning Practice Guidance ('the PPG') on the Community Infrastructure Levy.
- 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 paragraphs 145 and 146) that where a neighbourhood plan is made, the neighbourhood area will benefit from 25% of the levy revenues arising from the development that takes place in the area. Where there is a parish council, the money will be paid to the parish. Where there is not a parish council, the local authority should consult with the community about how to use the funds, including to support priorities set out in the neighbourhood plan. 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. The funds can be spent on infrastructure or anything

else that is concerned with addressing the demands that development places on the area. 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**

- 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. These include the Town and Country Planning Act 1990 Schedule 4B paragraphs 8, 12 and 13, and the Planning and Compulsory Purchase Act 2004 sections 38A and 38B. This section sets out the legislative approach that applies to decision-making on all neighbourhood plans – specific policy issues and relevant sections of policy and guidance that apply to this particular neighbourhood plan will be considered in later sections.

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

- 5.2 The Town and Country Planning Act 1990 (TCPA 1990) Schedule 4B paragraph 12(2) 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 sub-paragraph (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.*

5.3 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**

5.4 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.

5.5 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].*

5.6 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)”.

5.7 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;*

## **6 BACKGROUND TO THE SPITALFIELDS NEIGHBOURHOOD PLAN**

6.1 This section outlines the key statutory stages in the production of the Spitalfields Neighbourhood Plan.

- 6.2 The Spitalfields Neighbourhood Area and Neighbourhood Forum were designated by Cabinet on 5 April 2016. Neighbourhood forums (though not neighbourhood areas) expire after five years unless they are re-designated. The Spitalfields Neighbourhood Forum was re-designated by Cabinet on 3 March 2021 for a further five years, effective from 5 April 2021.
- 6.3 The Spitalfields Neighbourhood Plan was developed by the Forum between 2016 and 2020, with the assistance of a wide range of public engagement. The process of engagement is described in the Forum's Consultation Statement, which has been attached as Appendix 4. The first stage of formal consultation (known as Regulation 14 consultation, after the Neighbourhood Planning (General) Regulations 2012) was arranged by the Forum, and held between 20 July and 14 September 2020.
- 6.4 Following this, the plan was updated in response to the representations the Forum received – these changes are again described in the Appendix 4 Consultation Statement. The neighbourhood plan was then submitted to the Council on 30 October 2020. On 16 December 2020, Cabinet agreed that the submission met the statutory procedural requirements for neighbourhood plans, and should proceed to a second stage of consultation and an independent examination.
- 6.5 The second stage of formal consultation (known as Regulation 16 consultation) was organised by the Council and held between 7 January and 18 February 2021. A total of 49 representations were received during the consultation, through the Council's online consultation portal and emails to the Plan Making team, including a response from the Plan Making team. The majority of responses from local residents and business owners were supportive of the plan, particularly policy SPITAL7 on affordable workspace. Most responses from organisations were neutral and expressed no concerns about the content of the plan. Responses from Historic England, Thames Water, and the Council's Plan Making team requested some alterations to aid clarity, provide additional information on heritage assets, and ensure consistency with national and London-wide planning policy. One response from Zeloof LLP and Truman Estates Ltd was strongly critical of policy SPITAL7 on affordable workspace, stating that the policy would be unviable and not adequately supported by evidence.
- 6.6 Following the consultation, the neighbourhood plan, supporting documents, and the representations received during the consultation were submitted to an independent examiner to assess the plan. The examiner appointed, as agreed between the Council and the Forum, was Jill Kingaby MRTPI.
- 6.7 The final examiner's report was received by the Council and the neighbourhood forum on 15 July 2021, and published on the Council's website on 26 July 2021. The Forum expressed a willingness to implement the Examiner's recommended modifications, and produced an updated version of the neighbourhood plan with the modifications implemented. This has also been published on the Council's website.



## **7 CONSIDERATION OF THE SPITALFIELDS NEIGHBOURHOOD PLAN EXAMINER'S REPORT AND ASSESSMENT**

7.1 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.

7.2 The Spitalfields Neighbourhood Plan Examiner has recommended that modifications be made to the draft plan, and the modified plan be submitted to a referendum.

7.3 The examiner's report is attached to this report as appendix 1. A tracked changes edited version of the neighbourhood plan to show the proposed modifications in context is attached as appendix 2.

### **Legal Requirements**

7.4 The Executive Summary of the Examiner's Report recommends that "the Plan, once modified, proceeds to referendum on the basis that it has met all the relevant legal requirements".

7.5 The Examiner then looks in detail at procedural compliance in section 3 of the report. She concludes that:

- The plan was prepared by an eligible body (the neighbourhood forum) that was properly designated (para 3.1)
- The plan is the only neighbourhood plan for this area, and relates only to the designated neighbourhood area (para 3.2)
- The plan specifies the period of time for which it has effect (para 3.3)
- The legal requirements for consultation have been met, and due regard has been had to government guidance on preparing and engaging on plans (para 3.9)
- The plan relates to the use and development of land (para 3.10)
- The plan is not concerned with 'excluded development' – that is, types of development which neighbourhood plans are expressly not allowed to deal with (para 3.11)
- The plan does not breach any human rights obligations (para 3.12)

7.6 On this basis, the Examiner concludes that the legal requirements of neighbourhood plans have been met. Council officers see no reason to disagree with this assessment.

## Basic Conditions

- 7.7 The Executive Summary of the Examiner’s Report states “I have concluded that subject to the policy modifications set out in this report, the Plan meets the Basic Conditions”. The Examiner then considers this issue in significant detail in section 4 of the report, looking at the general compliance of the plan with the basic conditions, and the compliance of specific policies. This section includes twelve recommended modifications (some of which consist of multiple alterations) which the Examiner feels are needed to bring the plan in line with the basic conditions. These modifications are also included in detail in an appendix to the report.
- 7.8 The table below sets out in brief the proposed modifications and the Examiner’s reason for proposing them. Please refer to the appendix of the Examiner’s Report for full details of what each modification entails.

<b>Modification Number</b>	<b>Summary of Proposed Modification</b>	<b>Examiner’s Reason</b>
PM1	Updating references to the Tower Hamlets Local Plan and new London Plan to reflect their adoption.	To have regard to national planning policy.
PM2	Removing Appendices C and D from the plan, to be provided as evidence base document instead.	To have regard to national policy, specifically para 31 of NPPF.
PM3	Updating Policies Map to show additional information as described in the Planning Context section of the plan.	To provide information on the strategic policy context.
PM4	Policy SPITAL1 supporting text: adding text that emphasises the relative status of different heritage assets.	To have regard to national planning policy.
PM5	Policy SPITAL1 supporting text: adding text to explain how heritage assets were assessed for inclusion in Appendix B, and to refer to at-risk heritage assets.	To clarify the assessment process for Appendix B and to have regard to national policy, specifically para 197 of the NPPF.
PM6	Policy SPITAL1: altering and adding text to emphasise the relative status of different heritage assets; the importance of at-risk heritage assets; and adding a map of significant views.	To have regard to national planning policy.
PM7	Policy SPITAL3: Adding text to emphasise ‘healthy streets’ approach, in both policy text and	To ensure conformity with the London Plan and Local Plan, and to

	supporting text. Removing requirement in the Priority Heritage Projects table for benches to be designed to prevent people sleeping on them.	contribute to the achievement of sustainable development.
PM8	Policy SPITAL4: Altering policy and supporting text to take account of changes to use classes, and to clarify that factors are based on those in the London Plan.	To ensure conformity with the London Plan and Local Plan, and to contribute to the achievement of sustainable development.
PM9	Policy SPITAL5: Altering text to clarify that decisions on Local Green Spaces will be made in line with national green belt policy.	To have regard to national planning policy.
PM10	Policy SPITAL7 supporting text: altering text to make clear how affordable workspace providers can be chosen.	To ensure clarity.
PM11	Including at-risk heritage assets (as identified by Historic England) in Appendix A.	To have regard to national planning policy.
PM12	Adding introductory text to Appendix B to explain how heritage assets were assessed.	To clarify the assessment process for Appendix B and to have regard to national policy, specifically para 197 of the NPPF.

- 7.9 In addition, the Examiner also considered whether the plan meets EU obligations relating to the environment, which remain in force under British law. These issues were addressed by a screening report prepared by the Council to assess whether the plan required a full Strategic Environmental Assessment or Habitats Regulation Assessment. The screening report concluded that full assessments were not necessary, and the Examiner agreed with this.
- 7.10 Council officers agree with the Examiner’s proposed modification in all instances, and recommend that they be accepted. Modifications PM2, PM7, PM8, PM9, and PM10 stem directly from suggestions made by Plan making officers in their response to the Regulation 16 consultation on the plan. Plan Making officers also supported policy SPITAL7, which was the only policy to be strongly opposed by a consultee, and are pleased to see the Examiner confirm that the policy meets the basic conditions (as discussed in paras 4.28 to 4.33 of the Examiner’s Report).
- 7.11 In discussion with the forum, some minor additional changes have been made in addition to the examiner’s recommendations. These changes have been

made for reasons of clarity and consistency, and therefore ensure the neighbourhood plan is in conformity with the requirement of the Planning Practice Guidance on Neighbourhood Planning, paragraph 041, that neighbourhood plans “should be clear and unambiguous”. All the changes relate to the addition of figure 4.2 to the neighbourhood plan, which is part of the examiner’s recommendation PM6. The changes are as follows:

- New paragraph 4.27 to describe figure 4.2.
- New paragraph 7 in Appendix A to describe figure 4.2.
- Some alterations to Appendix A to ensure figure 4.2 and the relevant sections of Appendix A are consistent with one another. This includes indicating the numbering on the map of views that are described in the text; addition of text describing existing views that are featured in existing conservation area character appraisals (numbered AVE07, BVE01, BVE03, IVE01, IVE02, LVE01); a correction of the description for view BVN03 in line with the approved map; addition of text for views EVN01 and EVN02 in line with the approved map; removal of text from below the entries for views HVE04 and HVE05 which did not relate to specific protected views.

### **Referendum Area**

- 7.12 At paragraph 5.3 of her Report, the Examiner considers whether the referendum area should be extended beyond that of the designated Neighbourhood Planning Area. The report concludes that there are no policies or proposals in the plan which would have an impact beyond the neighbourhood area boundary, and therefore there is no justification to extend the boundary for the referendum.

### **Conclusion**

- 7.13 The Examiner’s Report concludes that the Spitalfields Neighbourhood Plan meets the legal requirements of neighbourhood plans; that the plan will meet the basic conditions if the recommended modifications are made; that the plan should therefore proceed to referendum; and that the referendum area should be the same as the designated Neighbourhood Planning Area.
- 7.14 Council officers in the Plan Making team agree with these conclusions and see no justified reason for departing from them. The Neighbourhood Forum have also indicated that they accept the Examiner’s recommendations.
- 7.15 The Council has the ability to make additional modifications as part of this decision, if they are considered necessary to ensure the plan meets the basic conditions and legal requirements. Council officers believe that there are no further modifications needed, beyond those recommended by the Examiner.
- 7.16 On this basis, the Mayor is recommended to accept the Examiner’s conclusions, and to send a modified version of the Spitalfields Neighbourhood Plan for referendum. The version of the plan that the referendum should consider is attached to this report as Appendix 3.

- 7.17 As the area is designated as a Business neighbourhood Area, two referendums will be held on the same day – one for registered voters living in the neighbourhood area, and one for non-domestic rate payers based within the neighbourhood area. If both referendums indicate support for the neighbourhood plan, the Council should adopt the plan unless there are compelling reasons not to do so. Similarly, if both referendums reject the neighbourhood plan, the Council should not adopt it. If the results of the two referendums conflict, the decision on whether to adopt the plan rests with the Council.
- 7.18 The Planning Policy Guidance on Neighbourhood Plans was updated in 2020, to include paragraph 107 (reference ID 41-107-20200925). This paragraph states that “where the local planning authority has issued a decision statement (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send a neighbourhood plan to referendum, that plan can be given significant weight in decision-making, so far as the plan is material to the application”.
- 7.19 On this basis, the neighbourhood plan will have significant weight in relevant planning decisions from the day of this decision until the day the referendum is held. If the plan passes at referendum, it will continue to have significant weight as a formal part of the development plan (once formally made by the Council). If the plan fails at referendum, it will no longer carry any weight in planning decisions.

## **8 EQUALITIES IMPLICATIONS**

- 8.1 The recommendations in this report would see new policy implemented in the Spitalfields Neighbourhood Area, and an Equalities Impact Assessment Checklist has been attached to this report as Appendix 5. It is not felt that there will be any negative impacts on equalities issues due to the neighbourhood plan.

## **9 OTHER STATUTORY IMPLICATIONS**

- 9.1 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.
  - Data Protection / Privacy Impact Assessment.

- 9.2 Best Value Implications: The Council will be responsible for the costs of organising and executing the referendum on the neighbourhood plan. However, the Council will be able to claim £30,000 of funding from the government for the referendum (for a single referendum the funding would usually be £20,000, but additional funding is available for business referendums).
- 9.3 Consultations: The neighbourhood plan has undergone all the stages of consultation required under statute, which includes two rounds of formal consultation. There is no requirement for further consultation.
- 9.4 Environment: the neighbourhood plan has been subject to a screening exercise relating to the need for a Strategic Environmental Assessment (SEA) or Habitats Regulation Assessment (HRA). The screening assessment found that neither an SEA or HRA was required, and this view was confirmed by the statutory consultees (Natural England, Historic England, Environment Agency) and the Examiner's Report.
- 9.5 Risk: 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. This report recommends accepting the Examiner's recommendations in full, so this risk is eliminated.
- 9.6 Crime/Safeguarding/Data Protection: no implications.

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

- 10.1 There are no material financial implications emanating from this report. Costs associated with conducting the Spitalfields Neighbourhood Plan referendum will be met from a combination of existing revenue budgets and Government funding of £30k.
- 10.2 Significant costs will be incurred implementing the plan should the referendum be successful and will be subject of separate reports.
- 10.3 Adoption of a neighbourhood plan will allow the Spitalfields area to benefit from the allocation of 25% of CIL receipts relating to planning permissions granted in that area. The council will hold these funds and consult with local people on how best to spend the money.

## **11 COMMENTS OF LEGAL SERVICES**

- 11.1 Section 38A(2) 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(3) 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.

- 11.2 The Mayor is authorised to note the officer recommendations detailed in this report by virtue of:
- regulation 4(1)(a) of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000; and
  - Section 18 of the Council's Constitution that vests all Executive functions in the Mayor.
- 11.3 Pursuant to the requirements of Schedule 4B, paragraph 12(2) of the TCPA 1990 and as is the case in the present matter for consideration, where an examiner has made a report relating to a proposed neighbourhood development plan the Council must :
- consider each of the recommendations made by the report (and the reasons for them), and
  - decide what action to take in response to each recommendation.
- 11.4 Paragraph 093 of the Government's Planning Practice Guidance on Neighbourhood Planning states that the Council must issue its decision on what action it will take, including whether to send the draft neighbourhood plan to a referendum within 5 weeks of receipt of the examiner's report.
- 11.5 Under regulation 18(1) and (2) of the Neighbourhood Planning (General) Regulations 2012, the council must publish its decision and the reasons for it (the decision statement) and the examiner's report on its website and in such other manner as likely to bring these to the attention of people who live, work or carry on business in the neighbourhood area.
- 11.6 Importantly, pursuant to the paragraph 107 (41-107-20200925) of the Government's Planning Practice Guidance, once the local planning authority has issued a decision statement detailing its intention to send a neighbourhood plan to referendum, the draft neighbourhood plan can be given significant weight in decision-making so far as the plan is material to the application.
- 11.7 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. The order on which the referendum is to be made is the draft neighbourhood plan with the limited modifications made to it that the Council considers appropriate to make (para 12(5) of Schedule 4B). As this report indicates, officers have made minor modifications to the draft plan received from the Examiner in

order to ensure that it meets the statutory 'basic conditions' in paragraph 8(2) of Schedule 4B.

- 11.8 Under s38A(4)(a) of the 2004 Act, the Council must make a neighbourhood development plan if in each applicable referendum held under Schedule 4B of the TCPA 1990, more than half of those voting have voted in favour of the plan. Under S38A(5) of the 2004 Act, in situations where there are two applicable referendums because the area is designated as a business area under S61H of the TCPA 1990, if only one of those referendums votes in favour of the neighbourhood plan, the Council may choose whether or not to make the plan. The Council must make any such plan as soon as reasonably practicable after the referendum is held.
- 11.9 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. These matters will be the subject of a further report to Cabinet for the adoption of the neighbourhood plan in circumstances where a successful referendum is held in May 2021.
- 11.10 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.
- 11.11 The Mayor will note that paragraphs 6.3 to 6.5 of the report explain that public consultation was undertaken between 20 July and 14 September 2020 and 7 January and 18 February 2021 in satisfaction of the general public law duties.
- 11.12 The Courts have held that all fair consultations must satisfy the following:
1. Consultation must be undertaken at a time when proposals are still at a formative stage;
  2. Sufficient reasons must be given for any proposal to allow an intelligent consideration of and response to the proposal;
  3. Adequate time must be given for consideration and response; and
  4. Responses must be conscientiously taken into account in finalising any proposal.

Paragraphs 6.3 to 6.5 of the report set out the extent of the consultations exercises undertaken and demonstrate a fair and legally robust process.

- 11.13 Further, section 8 of this report states that an Equalities Impact Assessment Checklist has been completed in relation to the proposed policy implications



arising from implementing the neighbourhood plan. This screening concluded that no negative equalities impacts would arise from the recommendations in this report and implementation of the Neighbourhood Plan. The assessment demonstrates that the Council has complied with and discharged the Public Sector Equality Duty in s149 of the Equality Act 2010.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

- Appendix 1 – Report on Spitalfields Neighbourhood Plan 2020-2035
- Appendix 2 – Tracked Changes Version of the Spitalfields Neighbourhood Plan
- Appendix 3 – Referendum Version of the Spitalfields Neighbourhood Plan
- Appendix 4 – Spitalfields Neighbourhood Plan Consultation Statement
- Appendix 5 – Equalities Impact Assessment Checklist

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

- NONE

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

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