


<b>Cabinet</b>  1 August 2022	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Place Corporate Director	<b>Classification:</b> Unrestricted
<b>Roman Road Bow Neighbourhood Plan Examiner's Report and Referendum</b>	

<b>Lead Member</b>	<b>Cllr Kabir Ahmed, Cabinet Member for Regeneration, Inclusive Development and Housebuilding</b>
<b>Originating Officer(s)</b>	Steven Heywood, Principal Planning Officer, Plan Making Team  Marissa Ryan-Hernandez, Strategic Planning Manager
<b>Wards affected</b>	Bow East Bow West
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	19 May 2022
<b>Reason for Key Decision</b>	Impact on Wards
<b>Strategic Plan Priority / Outcome</b>	This decision will support one or more of the Corporate Priorities as set out in the Strategic Plan 2022-26 which is anticipated to be approved at this meeting

### Executive Summary

The Roman Road Bow Neighbourhood Plan has been the subject of an independent examination process. On 31 May 2022, the Council and the Neighbourhood Forum received the examiner's final report on the neighbourhood plan. 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 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 the officers' view that the Council agree with the recommendation that the neighbourhood plan meets the basic conditions subject to modifications being made, and can therefore progress to referendum.

## **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Note Appendix 1: Roman Road Bow Neighbourhood Plan Final Report of Examination and Appendix 3: Referendum Version of the Neighbourhood Plan, and 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 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.
3. Note that under the Planning Policy Guidance on Neighbourhood Planning, the neighbourhood plan will have significant weight in the planning decision-making process for the designated neighbourhood area until the referendum can be held; and if the plan is successful at referendum it will have full weight in the planning decision-making process.
4. Note the specific equalities considerations as set out in Section 8.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The Roman Road Bow Neighbourhood Plan has been the subject of an independent examination process. Following receipt of an Examiner's report on 31 May 2022 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. 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 **Alternative 1**

2.3 The Council could decide that it does not agree that the plan meets the basic conditions after the making the modifications recommended by the Examiner. For this option to be followed there would need to be a strong justification for disagreeing with the conclusions of the Examiner.

2.4 This option would require the Council to undertake a re-consultation, notifying every party that was consulted in all previous consultations on the Plan and allowing them an opportunity to provide representations regarding the proposed modifications. The Council would be liable for all costs related to this consultation and could not rely on the resources of the Neighbourhood Forum.

2.5 The Neighbourhood Forum could appeal this decision to the Secretary of State, who could then order the council to proceed to referendum on the plan as originally modified by the Examiner. The Secretary of State can intervene at any stage, even after the council has undertaken the re-consultation, and invested extensive resources.

## 2.6 **Alternative 2**

2.7 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 can be modified to meet the basic conditions and legal requirements. Officers are not aware of any justifiable reasoning why the plan cannot be modified to meet these requirements.

## 2.8 **Alternative 3**

2.9 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, and in many cases they directly address elements of the plan that council officers had already identified as potentially failing to meet the basic conditions. 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.

2.10 While the Council is not bound by the Examiner'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 Levelling Up, Housing and Communities.

## **3 DETAILS OF THE REPORT**

- 3.1 This report provides an assessment of the Roman Road Bow 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 Roman Road Bow 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
  - Section 8 – implications concerning coronavirus

#### **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 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 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' 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% 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 back 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 (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 ROMAN ROAD BOW NEIGHBOURHOOD PLAN**

6.1 This section outlines the key statutory stages in the production of the draft Roman Road Bow Neighbourhood Plan.

6.2 The Roman Road Bow Neighbourhood Area was designated by a Mayoral Executive Decision on 6 February 2017. In April 2021, as part of the consultation on the neighbourhood plan, it was identified that an error had been made in this designation, in that a small part of the designated neighbourhood area was located within the London Legacy Development Corporation planning area. Tower Hamlets Council did not have the authority to designate this land as part of a neighbourhood planning area, and this was



therefore identified as a mistake in the original designation. This error was corrected in a Cabinet decision on 30 June 2021.

- 6.3 The Roman Road Bow Neighbourhood Forum was designated by a Cabinet decision on 16 August 2017. The designation of the Forum lasts for five years, and can be renewed.
- 6.4 The Roman Road Bow Neighbourhood Plan was developed by the Forum between 2017 and 2021. A wide range of public engagement was undertaken, and is described in the Forum's consultation statement, which was submitted alongside the neighbourhood plan. The first stage of formal consultation, known as a Regulation 14 consultation, was arranged by the Forum and held between 15 March and 27 April 2021. Due to the correction of an error in the neighbourhood area boundary (as described in paragraph 6.2 above), a second round of Regulation 14 consultation was held between 5 July and 15 August 2021, to allow the chance for any interested parties to comment on whether the correction of the boundary affected the neighbourhood plan.
- 6.5 Following these consultations, the plan was updated in response to the representations the Forum received – these changes are again described in the Consultation Statement. The neighbourhood plan was then submitted to the Council on 15 October 2021. On 24 November 2021, Cabinet agreed that the submission met the statutory procedural requirements for neighbourhood plans, and should proceed to the next stage of consultation and an independent examination.
- 6.6 The second stage of formal consultation (known as Regulation 16 consultation) was organised by the Council and held between 6 December 2021 and 7 February 2022. A total of 29 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 responses were broadly supportive of the aims of the plan, and all responses were passed on to the independent examiner.
- 6.7 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.
- 6.8 On 23 March 2022, the examiner sent a letter to the Forum and the Council identifying a number of issues that had been raised as part of the consultation on which the examiner requested further clarification from the Forum. The examiner asked the Council to work with the Forum to develop a Statement of Common Ground as to what changes should be made to the plan. Officers worked with the Forum to develop this, and the Statement of Common Ground was submitted to the examiner on 22 April 2022. All documents related to the examination can be found on the Council's website at [https://www.towerhamlets.gov.uk/ignl/planning\\_and\\_building\\_control/planning\\_policy\\_guidance/neighbourhood\\_planning/Roman\\_Road\\_Bow.aspx](https://www.towerhamlets.gov.uk/ignl/planning_and_building_control/planning_policy_guidance/neighbourhood_planning/Roman_Road_Bow.aspx).

6.9 The final examiner's report was received by the Council and the neighbourhood forum on 31 May 2022, and published on the Council's website on 22 June 2022.

## **7 CONSIDERATION OF THE ROMAN ROAD BOW NEIGHBOURHOOD PLAN EXAMINER'S REPORT AND ASSESSMENT**

7.1 Paragraph 10(2) of Schedule 4B 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 Roman Road Bow Neighbourhood Plan Examiner has recommended that modifications be made to the draft plan, and the modified plan be submitted to a referendum. The examiner's report is attached to this report at Appendix 1.

### **Legal Compliance**

7.3 The Executive Summary of the examiner's report states that "I recommend that the Plan, once modified, proceeds to referendum on the basis that it has met all the relevant legal requirements".

7.4 The examiner looks in detail at procedural compliance in Section 3 of the report, and concludes:

- That the plan was prepared by a qualified body for a properly designated area (paragraph 3.1);
- That it is the only neighbourhood plan for this area and does not relate to land outside the neighbourhood planning area (paragraph 3.2);
- That it specifies the time period to which it applies (paragraph 3.3);
- That consultation on the plan was sufficiently robust and wide-ranging to meet the legal requirements (paragraph 3.9);
- That the plan is related to the use and development of land (paragraph 3.10);
- That it does not include provisions and policies for 'excluded development' (paragraph 3.14);
- That it does not breach the European Convention on Human Rights (paragraph 3.15).

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

## Basic Conditions

- 7.6 The Executive Summary of the examiner’s report states that “I have concluded that subject to the policy modifications set out in this report, the plan meets the basic conditions”.
- 7.7 The examiner then considers the issue in 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 which the examiner feels are necessary to bring the plan in line with the basic conditions. These modifications are included in full in a table in Appendix 1 of the examiner’s report.
- 7.8 The table below briefly summarises 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 each modification.

<b>Modification Number</b>	<b>Summary of Proposed Modification</b>	<b>Examiner’s Reason</b>
PM1	Revising references to the London Plan; revising a number of maps to improve clarity.	To have regard to national planning policy, specifically para 16(d) of the NPPF; and for general conformity with the development plan.
PM2	Adding text and a map to explain the town centre hierarchy; additional text to define town centre; additional text to provide context on Roman Road market.	To have regard to national planning policy; for general conformity with the development plan; and to promote sustainable development.
PM3	Correcting a reference to the emerging Leaside Area Action Plan.	To have regard to national policy, specifically the Planning Practice Guidance on Neighbourhood Planning.
PM4	Additional text to provide context on sustainable travel in the area; to explain that CIL is the principal source of funding for street improvements; to define street clutter more clearly; to specify that policy GS1 relates to major development; to specify specific road junctions where safe crossings are needed; and to commit to joint working with Newham in areas around the Olympic Park.	To promote sustainable development; and to have regard to national planning policy, specifically para 16(d) of the NPPF.

PM5	Alterations to policy PS1 to enable it to support improvements outside of specifically named locations; and to add a reference to Mile End Park; and a correction to a map.	To promote sustainable development.
PM6	Correction of a map to distinguish between designated Local Green Spaces and broader definitions of public open space.	To promote sustainable development.
PM7	Alterations to policy HE1 to specify that affordable workspace should be provided in line with the Local Plan; to add a reference to the South East Marine Plan; and to update a map to distinguish more clearly between pubs covered by policy HE2 and other pubs in the area.	To be in general conformity with the development plan; to promote sustainable development; and to have regard to national policy, specifically paragraph 16(d) of the NPPF.
PM8	Additional text to provide further context on public houses in the area.	To have regard to national policy; and to promote sustainable development.
PM9	Alterations to policy H1 to add additional context around the housing assessment and the previous history of the allocated site; and to support appropriate development on other, unallocated sites identified in the housing assessment of the neighbourhood plan.	To promote sustainable development; and for general conformity with the development plan, specifically Local Plan policy S.H1 and the London Plan.
PM10	Alteration to policy H2 to define community-led housing.	To have regard to national policy, specifically paragraph 16(d) of the NPPF.
PM11	Alterations to policy CF1 to name specific locations that could benefit from additional sports and play facilities; and to specify that the policy applies to major developments.	To promote sustainable development.
PM12	Minor alterations to chapter 10 on CIL, to ensure it stands out as a separate topic.	To promote sustainable development.

7.9 The examiner notes that the neighbourhood plan contains a number of 'actions', which are clearly set out as being separate from 'policies'. These actions are community aspirations, and as they are not attempting to be enforced as planning policies, they are outside the scope of the examination.

A number of changes were proposed to these actions in the Statement of Common Ground between the Council and the Forum, and the examiner leaves the implementation of these changes to the Council and Forum.

- 7.10 The examiner also briefly considers whether the plan meets EU obligations in relation 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 needed, and the examiner agreed with this conclusion.
- 7.11 Council officers agree with the examiner's proposed modifications in all instances, and recommend they be accepted. Many of the modifications stem directly from the Statement of Common Ground developed between Council officer and the neighbourhood forum, and thus represent changes that officers felt needed to be made.
- 7.12 At the end of the Statement of Common Ground process, two remaining issues were identified on which Council officers and the Forum did not agree. One of these was the issue of providing more detail on the housing allocation in policy H1 – on this, the examiner has sided with the Council and recommended a modification to add more information. The other issue was around the designation of some open spaces as Local Green Spaces, a designation which gives them a greater level of protection. Officers were concerned that in some instances this may give too high a level of protection to amenity land within estates, which would then not be able to be relocated as part of any future development. On this point, the examiner has sided with the Forum and recommended that all the proposed Local Green Spaces be designated. Following the examination, officers recommend that the Council should now defer to the examiner and accept the recommendation, on the basis that the examiner has clearly explained her reasoning and why the Local Green Spaces should be designated.
- 7.13 In addition to the examiner's recommended modifications, officers recommend implementing all the changes to the 'actions' that were agreed as part of the Statement of Common Ground.

### **Referendum Area**

- 7.14 In paragraph 5.3 of the 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. Officers agree with this recommendation.

### **Conclusions**

- 7.15 The examiner's report concludes that the Roman Road Bow Neighbourhood Plan can meet the legal requirements and basic conditions of neighbourhood

plans if the recommended modifications are made; that if those modifications are made, the plan should therefore proceed to referendum; and that the referendum area should be the same as the designated neighbourhood planning area.

- 7.16 Council officers 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.
- 7.17 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 that affect the elements of the plan that would form part of the statutory development plan, beyond those recommended by the Examiner. However, a number of other modifications were agreed between Council officers and the Forum as part of the Statement of Common Ground. These modifications apply only to the wording of the 'actions', which are not part of the statutory planning policy. Officers therefore recommend that these changes also be made.
- 7.18 The Planning Policy Guidance on Neighbourhood Plans states in paragraph 107 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 Roman Road Bow Neighbourhood Area, and an Equalities Impact Assessment Checklist has been attached to this report as Appendix 4. It is not felt that there will be any negative impacts on equalities issues due to the implementation of 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 £20,000 of funding from the government for the referendum.
- 9.3 Consultations: The neighbourhood plan has undergone all the stages of consultation required under statute. 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).
- 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 Levelling Up, Housing, and Communities.
- 9.6 Crime/Safeguarding/Data Protection: no implications.

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

- 10.1 There are no financial implications emanating from this report which seeks approval to move to referendum for the Roman Road Bow Neighbourhood Plan. Costs associated with conducting the referendum will be met from a combination of existing revenue budgets and Government funding of £20k.
- 10.2 There are likely to be financial implications if the plan is formally adopted, for example the use of CIL monies, where 25% of CIL collected in the neighbourhood area should be spent in that area. These implications will be reflected in the MTFS should the plan pass consultation and examination.

## **11 COMMENTS OF LEGAL SERVICES**

- 11.1 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.
- 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)(c) 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 Schedule 4B, Section 14(6) of the TCPA 1990 states that 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.

11.7 Schedule 4B, Section 13 states that:

(1) If—

(a) the local planning authority propose to make a decision which differs from that recommended by the examiner, and

(b) 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.

(2) If the authority consider it appropriate to do so, they may refer the issue to independent examination.

11.8 Importantly, pursuant to the paragraph 107 (41-107-20200407) 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.

11.9 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.

11.10 Due to the Coronavirus pandemic, all neighbourhood planning referendums scheduled to take place between 16 March 2020 and 5 May 2021 are now 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.

11.11 Under s38(4)(a) 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.

11.12 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.

- 11.13 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.
- 11.14 The Mayor will note that paragraphs 6.4 and 6.6 of the report explain that public consultation was undertaken between 15 March 2021 and 7 February 2022 in satisfaction of the general public law duties.
- 11.15 The common law provides that a public body must adopt a fair procedure to decision-making to ensure that members of the public are provided with a fair and informed opportunity to make representations and provide their comments before the decision comes into effect. If a public body embarks on a consultation procedure then the common law imposes basic criteria that must be satisfied in order for that procedure to be considered lawful and fair (*R. v Brent London Borough Council, ex. P. Gunning* [1985] 84 LGR 168) established the following basic criteria (now known as the *Sedley* criteria), that all fair consultations must satisfy:
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 6.4 and 6.6 of the report set out the extent of the consultations exercises undertaken and demonstrate a fair and legally robust process.

- 11.16 Further, paragraph 8.1 of this report states that an Equalities Impact Assessment Checklist (see Appendix 4) has been completed in relation to the proposed policy implications arising from implementing the neighbourhood plan. It is concluded that no negative equalities impacts would arise from the recommendations in this report and implementation of the Neighbourhood Plan. The Checklist 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**

- Roman Road Bow Neighbourhood Plan Consultation Statement (<https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Strategic-Planning/Neighbourhood-Planning/RRBowConsultationStatement.pdf>)

### **Appendices**

- Appendix 1 – Roman Road Bow Neighbourhood Plan Final Report of Examination
- Appendix 2 – Statement of Common Ground Between LB Tower Hamlets and Roman Road Bow Neighbourhood Forum
- Appendix 3 – Referendum Version of the Neighbourhood Plan (to follow)
- Appendix 4 – 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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