


<b>CABINET</b>	 <b>TOWER HAMLETS</b>
18 December 2019	
<b>Report of:</b> Ann Sutcliffe, Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Isle of Dogs Neighbourhood Plan – Validation of Submission</b>	

<b>Lead Member</b>	<b>Councillor Rachel Blake, Cabinet Member for Planning, Air Quality and Tackling Poverty</b>
<b>Originating Officer(s)</b>	Steven Heywood, Plan-Making Officer
<b>Wards affected</b>	Island Gardens, Canary Wharf, Blackwall & Cubitt Town
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	19 November 2019
<b>Reason for Key Decision</b>	Significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority
<b>Strategic Plan Priority / Outcome</b>	<b>1. People are aspirational, independent and have equal access to opportunities;</b> <b>2. A borough that our residents are proud of and love to live in</b>

### Executive Summary

The Isle of Dogs Neighbourhood Plan was formally submitted for consideration by the Council on 23 October 2019. The Council is now required to assess the submission against the statutory requirements for neighbourhood plan submissions, and decide whether the plan should be put forward for further consultation and examination. The Council is not required at this stage to make an assessment of the suitability of the plan for adoption by the Council.

### Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the Isle of Dogs Neighbourhood Plan to be submitted for examination, on the basis that it is compliant with the necessary regulations under the Neighbourhood Planning (General) regulations 2012.
2. Authorise the Divisional Director of Planning and Building Control, in

consultation with the Cabinet Member for Planning, Air Quality and Tackling Poverty, to provide comments on behalf of the Council on the submission version of the neighbourhood plan during the Regulation 16 publicity period.

3. Agree that the Council should proceed to appoint an examiner of the neighbourhood plan with the consent of the Isle of Dogs Neighbourhood Forum.
4. Note the Equalities Impact Assessment considerations as set out in Paragraphs 7.1 and 7.2.

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

- 1.1 Tower Hamlets Council has received a submission of a draft neighbourhood plan under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 ('the 2012 Regulations').
- 1.2 The Council is required to consider whether the submission of the neighbourhood plan meets the legal requirements for such plans under Schedule 10 of the Localism Act 2011. If the submission meets those requirements, the neighbourhood plan should be taken forward to formal consultation and examination.
- 1.3 Officers have assessed the submission against the relevant legislation and regulations and are satisfied that the Isle of Dogs Neighbourhood Plan as submitted meets the requirements to proceed to consultation and examination. This is the reason for recommendation 1 above.
- 1.4 Under Regulation 16 of the 2012 Regulations, the Council must publicise and consult on the submission documents 'as soon as possible' after receiving them (assuming they meet the requirements of the legislation).
- 1.5 The Council organises the consultation under Regulation 16, but is also able to respond to that consultation as an interested party. An adopted neighbourhood plan will form part of the Council's development plan and will have full weight in decision making on planning matters in the neighbourhood plan area. This is the reason for recommendation 2 above.
- 1.6 Schedule 10 of the Localism Act 2011 requires an independent examiner of the neighbourhood plan to be appointed, who will examine the plan following the Regulation 16 consultation. This person should be appointed with the consent of the neighbourhood forum. This is the reason for recommendation 3 above.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The Council may decline to consider a neighbourhood plan submission if it is considered a repeat submission; or can decline to take forward a

neighbourhood plan if it considered not to meet the legislative requirements. If the neighbourhood plan submission meets the legislative requirements and does not meet the definition of a repeat proposal, it must be taken forward.

- 2.2 Officers consider that the submission meets the legislative requirements, and is suitably different from the previously submitted Isle of Dogs Neighbourhood Plan that it cannot be considered a repeat proposal, and therefore must be taken forward to consultation and examination. Consequently, there is no alternative option provided.

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

- 3.1 This report provides an overview of the assessment of the Isle of Dogs Neighbourhood Plan submission.

- 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 Isle of Dogs Neighbourhood Plan submission

### **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 Core Strategy (2010) and Managing Development Document (2013) and the London Plan (2016). The Core Strategy and Managing Development Document are expected to be superseded by the Local Plan 2031: Managing Growth and Sharing the Benefits in early 2020.
- 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 submission and consideration of NDPs.

### **Submitting the Neighbourhood Development Plan**

- 5.2. In accordance with Regulation 15 of the 2012 Regulations where a relevant body submits a NDP to the LPA it must include:
- (a) the proposed Neighbourhood Development Plan;
  - (b) a map or statement which identifies the area covered by the Neighbourhood Plan;
  - (c) a Consultation Statement that contains details of who was consulted on the draft Neighbourhood Plan, how they were consulted, the main issues and concerns raised, and how these have been addressed in the Neighbourhood Plan;
  - (d) a Basic Conditions Statement that sets out how the Plan meets the 'basic conditions'. These being:
    - i. it has regard to national policies and advice;
    - ii. it has 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;
    - iii. it has special regard to the desirability of preserving or enhancing the character or appearance of any conservation area;
    - iv. it contributes to the achievement of sustainable development;
    - v. it is in general conformity with the strategic policies contained in the development plan for the area of the authority; and

- vi. and that the making of the order does not breach, and is otherwise compatible with, EU obligations. And,
- (e) where appropriate, the information to enable appropriate environmental assessments if required.

5.3. An LPA may decline to consider a plan proposal if they consider it to be a repeat proposal (TCPA 1990 Schedule 4B Paragraph 5). If an LPA declines to consider a plan on this basis it must inform the forum of this decision.

### **Considering the submission**

5.4. In accordance with the TCPA 1990 Schedule 4B Paragraph 6 and Planning and Compulsory Purchase Act (PCPA) 2004 Schedule 38B, Paragraphs 1, 2 and 4, the LPA must consider the following:

- (a) whether the neighbourhood forum is authorised to act;
- (b) whether the proposal and accompanying documents:
  - i. comply with the rules for submission to the LPA (see 5.2 above); and
  - ii. meet the 'definition of an NDP': "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"; and
  - iii. meet the 'scope of NDP provisions':
    - 1. The NDP must specify the period for which it is to have effect; and
    - 2. It cannot include provision about development that is 'excluded development' (as defined by paragraph 61K of schedule 9 of the TCPA 1990) such as minerals and waste matters or Nationally Significant Infrastructure Projects; and
    - 3. It cannot relate to more than one neighbourhood area and there are no other NDPs in place that cover any part of the neighbourhood area.
- (c) whether the neighbourhood forum has undertaken the correct procedures in relation to consultation and publicity (outlined in Regulation 14 of the 2012 Regulations). These state that before submission to the LPA the qualifying body should:
  - i. publicise (but this does not have to be on a website) in a way that is likely to bring to the attention of people who live work or carry on business in the area details of :
    - 1. the proposals,
    - 2. when and where they can be inspected,
    - 3. how to make representations, and
    - 4. the deadline for making representations – not less than 6 weeks from when they were first publicised
  - ii. consult any consultation body listed in The Neighbourhood Planning (General) Regulations 2012 Schedule 1 whose interests they consider may be affected by the proposals for a NDP; and

- iii. send a copy of the NDP to the LPA.
- 5.5. In accordance with paragraph 6 of schedule 4B of the TCPA 1990, the LPA can refuse to take forward a plan proposal if any of the criteria above do not apply.
- 5.6. The LPA must notify the forum whether or not they are satisfied that the proposal complies with the criteria for a NDP. Where it is not satisfied the LPA can refuse and must notify them of the reasons. It must also publicise its decision in a 'decision notice' (Regulation 19 of the 2012 Regulations).
- 5.7. The legislation and regulations are clear that when a draft NDP is submitted to a LPA the authority is only considering the draft plan against the statutory requirements set out in paragraph 6 of Schedule 4B of the TCPA 1990. In particular, the LPA has to be satisfied that a basic condition statement has been submitted but it is not required to consider whether the draft plan meets the basic conditions. It is only after the independent examination has taken place and after the examiner's report has been received that the LPA comes to its formal view on whether the draft NDP meets the basic conditions (Neighbourhood Planning PPG Paragraph 053).

## **6. NEIGHBOURHOOD DEVELOPMENT PLANS: ISLE OF DOGS NEIGHBOURHOOD PLAN SUBMISSION**

- 6.1. This section provides detailed of the assessment of the Isle of Dogs Neighbourhood Plan submission, in relation to the criteria outlined above.

### **Submission of the Neighbourhood Development Plan**

- 6.2. The Isle of Dogs Neighbourhood Forum submitted the required documents to the Council on 23 October 2019. Following an initial review of the documents by legal and planning officers, the Forum were asked to provide further detail in the consultation statement; and to assess whether the neighbourhood plan meets the basic conditions in regard to the new Tower Hamlets Local Plan as well as the adopted plan. The final suite of updated documents was received on 28 October 2019.
- 6.3. The final versions of the required documents are attached as appendices to this report. Further evidence base documents were submitted and will be provided to the examiner of the plan – they are not statutory requirements for the submission, so have not been attached as appendices to this report. The full list of submitted documents is as follows:
  - Isle of Dogs Neighbourhood Plan (Appendix 1)
  - Isle of Dogs Neighbourhood Plan Infrastructure Impact Assessment Model (Appendix 2)
  - Consultation Statement (Appendix 3)
  - Consultation Statement Appendices (Appendix 4-6)
  - Basic Conditions Statement (Appendix 7)

- Isle of Dogs Neighbourhood Plan Evidence Base Document (not attached)
- QC advice provided to the Forum on the previous version of the Neighbourhood Plan (not attached)

### **Assessment of the Submission**

- 6.4. This section summarises the assessment of the submission against the requirements set out in the legislation and regulations, as described above.

*In accordance with TCPA 1990 Schedule 4B Paragraph 6 and PCPA 2004 Schedule 38B, Paragraphs 1, 2 and 4, is the neighbourhood forum authorised to act?*

- 6.5. Yes. The Isle of Dogs Neighbourhood Area and Neighbourhood Forum were designated by Tower Hamlets Council on 5 April 2016, with the decision notice published on 19 April 2016. The designation process followed the required statutory procedures and as such the neighbourhood forum is authorised to act.

*In accordance with TCPA 1990 Schedule 4B Paragraph 6 and PCPA 2004 Schedule 38B, Paragraphs 1, 2 and 4, did the proposal and accompanying documents comply with the rules for submission to the LPA (see 5.2 above)?*

- 6.6. Yes. The documents received on 23 and 28 October 2019 included all the necessary documents to comply with the submission requirements:
- The submission version of the neighbourhood plan;
  - a map of the area the plan relates to (within the plan itself and the basic conditions statement);
  - a consultation statement which records who was consulted, how they were consulted, a summary of responses received, and an explanation of how those responses were taken into account in the preparation of the submission version of the plan;
  - a basic conditions statement which covers the issues required, and which makes clear that the Council's SEA/HRA screening found that an SEA or HRA are not required.

*In accordance with TCPA 1990 Schedule 4B Paragraph 6 and PCPA 2004 Schedule 38B, Paragraphs 1, 2 and 4, did the submitted draft NDP meet the 'definition of an NDP'?*

- 6.7. Yes. An NDP is defined 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" (PCPA 2004 (as amended)). While the plan does contain a number of issues which do not relate to development and use of land, these are presented as community aspirations. Therefore, on balance, the plan meets the definition that it mostly relates to the development and use of land.



*In accordance with TCPA 1990 Schedule 4B Paragraph 6 and PCPA 2004 Schedule 38B, Paragraphs 1, 2 and 4, did the submitted documents meet the 'scope of NDP provisions'?*

- 6.8. Yes. The plan meets the scope of NDP provisions. The plan period of 2019–2031 is specified in the submitted Neighbourhood Plan and in the Basic Conditions Statement. The Plan does not include provision regarding 'excluded development'. The Plan relates only to one neighbourhood area (the Isle of Dogs Neighbourhood Area) as designated and there are no other NDPs in place for that area.

*In accordance with TCPA 1990 Schedule 4B Paragraph 6 and PCPA 2004 Schedule 38B, Paragraphs 1, 2 and 4, whether the neighbourhood forum has undertaken the correct procedures in relation to consultation and publicity?*

- 6.9. Yes. The Isle of Dogs Neighbourhood Forum ran a public consultation between 3 April and 26 May 2019. This extended beyond the required six week consultation period to take account of the Easter holiday period. Five drop-in sessions were held at the Canary Wharf Idea Store during the consultation period, and a copy of the plan was sent to all the consultation bodies listed in Schedule 1 of the 2012 Regulations that the Forum considered might be affected by the proposals. A copy of the neighbourhood plan was sent to the Council. Details of the consultation activities can be found in Appendices 3 to 6.

### **Conclusion**

- 6.10. As outlined above, the submission of the Isle of Dogs Neighbourhood Plan is considered to comply with the relevant criteria and the plan should therefore proceed to consultation and examination.
- 6.11. It is not the Council's role at this stage to assess compliance of the neighbourhood plan with the basic conditions – at this point, the Council can only assess whether the Forum has provided a statement setting out their own assessment of how the plan meets the basic conditions. The Regulation 16 consultation period, held before the examination of the plan, provides an opportunity for the Council and other stakeholders to make representations on the plan, including how it complied with the basic conditions.

### **Next Steps**

- 6.12. If Cabinet approves the recommendations of this report, the Council will be responsible for arranging an independent examination of the neighbourhood plan, and for publicising the plan and inviting representations on it.
- 6.13. The consultation period will be six weeks, and is expected to run between 9 January and 19 February 2020, after the call-in period for this decision has expired. The plan will be made available on the Council's website and in hard copy at the Town Hall reception, Canary Wharf Idea Store, and Cubitt Town Library; a public notice will be placed in a local newspaper; and an email will

be sent to the planning policy database and to any other consultee referred to in the submitted consultation statement.

- 6.14. The examiner of the neighbourhood plan will be appointed by the Council, with the consent of the Forum. The Council will cover the costs of the examination, and will provide the examiner with all the submitted documents and any representations received during the consultation period. The examination is expected to begin immediately after the consultation period ends. The examination may include a public hearing – as it did with the previous version of the neighbourhood plan – but this is at the examiner’s discretion, and is not a required element of the process.

## **7. EQUALITIES IMPLICATIONS**

- 7.1. The Basic Conditions Statement submitted by the Forum includes an Equalities Impact Assessment of the proposals in the neighbourhood plan, which concludes that their effect on groups that share protected characteristics will be neutral or positive (Appendix 7, page 18 onwards).
- 7.2. Officers have also used the Council’s Equality Analysis Quality Assurance Checklist to ensure that the protected characteristics outlined in the Equalities Act 2010 have been considered (Appendix 8). It is considered that the plan does not appear to have any adverse effects on people who share the protected characteristics and no further action is required at this stage.

## **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. Best Value Implications: During the determination of the submission the Council has worked with the Isle of Dogs Neighbourhood Forum where appropriate, and in line with our neighbourhood planning guidance, having regard to economy, efficiency, and effectiveness, and in conformity with the statutory requirements as detailed in the relevant legislation.
- 8.3. Consultations: See paragraph 6.9 above, and Appendices 3 to 6.
- 8.4. 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, and concluded that neither an SEA nor an HRA is required. This decision was published on the Council's website on 12 July 2019, and is provided as Appendix 9.

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

- 9.1. There are no material financial implications emanating from this report. Costs will be incurred obtaining an independent examination and from any appeals. These costs are anticipated to be less than £10k and will be managed from within the existing budgetary provision.

## **10. COMMENTS OF LEGAL SERVICES**

- 10.1. The Mayor in Cabinet is recommended to (1) Approve the Isle of Dogs Neighbourhood Plan to be submitted for examination, on the basis that it is compliant with the necessary regulations under the Neighbourhood Planning (General) regulations 2012; (2) Authorise the Divisional Director of Planning and Building Control, in consultation with the Cabinet Member for Planning, Air Quality and Tackling Poverty, to provide comments on behalf of the Council on the submission version of the neighbourhood plan during the Regulation 16 publicity period; (3) Agree that the Council should proceed to appoint an examiner of the neighbourhood plan with the consent of the Isle of Dogs Neighbourhood Forum; (4) Note the Equalities Impact Assessment considerations as set out in Paragraphs 7.1 and 7.2.
- 10.2. Section 116 of the Localism Act 2011 makes provision for local communities to bring forward planning proposals at a local level. That Act (which amended the TCPA 1990 to make provision for neighbourhood planning), and the subsequent 2012 Regulations confer specific functions on an LPA in relation to neighbourhood planning.
- 10.3. Pursuant to section 9D of the Local Government Act 2000 all functions of an authority are executive functions unless they are specified as not in either the 2000 Act or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). Whilst some Planning functions cannot be the responsibility of the Executive, the decision whether a neighbourhood plan meets the statutory requirements and should proceed to referendum is not a specified function. This is therefore a decision for the Executive. In this regard recommendations 1, 2 and 4 are within the powers of the mayor in Cabinet.
- 10.4. Recommendation 3 is about the appointment of an Examiner. Legal services advises that this appointment has to be in accordance with the Council's contract standing orders.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- Cabinet Report, 19 December 2017 – Neighbourhood Planning: Isle of Dogs Neighbourhood Plan – 2017 to 2031 – Legal Compliance and Examination Stage (<http://democracy-internal.towerhamlets.gov.uk/documents/s118798/5.9%20Isle%20of%20Dogs%20Neighbourhood%20Plan.pdf>) – report for the same stage of decision making for the previous version of the neighbourhood plan

### **Appendices**

- Appendix 1: Isle of Dogs Neighbourhood Plan
- Appendix 2: Isle of Dogs Neighbourhood Plan Infrastructure Impact Assessment Model
- Appendix 3: Consultation Statement
- Appendix 4: Consultation Statement Appendix – Community Survey
- Appendix 5: Consultation Statement Appendix – Newspaper Articles
- Appendix 6: Consultation Statement Appendix – Forum Emails
- Appendix 7: Basic Conditions Statement
- Appendix 8: Equalities Impact Assessment Screening
- Appendix 9: SEA/HRA Screening Determination Letter

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

- NONE

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

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