


<b>Individual Mayoral Decision</b>  12 May 2020	
<b>Report of:</b> Ann Sutcliffe, Corporate Director Place	<b>Classification:</b> Unrestricted
<b>Isle of Dogs Neighbourhood Plan Examiner's Report and Referendum</b>	

<b>Lead Member</b>	<b>Councillor Rachel Blake, Deputy Mayor for Planning, Air Quality, and Tackling Poverty</b>
<b>Originating Officer(s)</b>	Steven Heywood, Plan Making Team Marissa Ryan-Hernandez, Strategic Planning Manager
<b>Wards affected</b>	Island Gardens Canary Wharf Blackwall and Cubitt Town
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	16/4/2020
<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 Isle of Dogs Neighbourhood Plan has been the subject of an independent examination process. On 14 April 2020, the Council and the Neighbourhood Forum received the examiner's final report on the neighbourhood plan, alongside a tracked change edit of the plan in line with the recommendations contained in the final 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 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. Officers note that due to recent guidance from the government on the impact of coronavirus, the referendum will need to be delayed until 6 May 2021.

## **Recommendations:**

The Mayor is recommended to:

1. Note Appendix 1: Isle of Dogs Neighbourhood Plan Final Report of Examination and Appendix 2: Examiner's Edited 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. Note Appendix 3: Referendum Version of the Neighbourhood Plan and Appendix 4: Response to Examiner's Recommendation and Additional Changes.
3. 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.
4. Note that further due to the Local Government and Police and Crime Commissioner (coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020, all neighbourhood planning referendums have been delayed until 6 May 2021, or until further notice that the relevant regulations have been amended in response to the coronavirus pandemic.
5. Note that under recently-issued Planning Policy Guidance on Neighbourhood Planning, the neighbourhood plan will have significant weight in the decision-making process for the designated neighbourhood area until the referendum can be held.
6. Note the specific equalities considerations as set out in Section 9.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The Isle of Dogs Neighbourhood Plan has been the subject of an independent examination process. Following receipt of an Examiner's report on 14 April 2020 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 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.
- 2.3 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, 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.
- 2.4 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 Isle of Dogs Neighbourhood Plan Examiner's Report recommendations and the Council's considerations of whether the Plan meets, or could meet following modification, the basic conditions and legal requirements.
- 3.2 The content of this report is as follows:
- Section 4 – an introduction to neighbourhood planning
  - Section 5 – outline of the relevant legislative framework and guidance
  - Section 6 – a background to the Isle of Dogs 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 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 ISLE OF DOGS NEIGHBOURHOOD PLAN**

- 6.1 This section outlines the key statutory stages in the production of the draft Isle of Dogs Neighbourhood Plan.
- 6.2 The Isle of Dogs Neighbourhood Area and Neighbourhood Forum were designated by Tower Hamlets Council in Cabinet on 5 April 2016, with the decision notice published on 19 April 2016.
- 6.3 A first version of the Isle of Dogs Neighbourhood Plan was developed in 2016-17. Regulation 14 consultation (arranged by the Forum) took place between March and April 2017, and Regulation 16 consultation (arranged by the Council) between January and February 2018. The plan was examined between March and June 2018 by the Independent Examiner Mr John Parmiter, with a public hearing held on 10 May 2018. The final examiner’s report for this first examination of the plan was received by the Council on 7 June 2018. The recommendation was that the plan did not meet the basic conditions and legal requirements, could not be modified to do so, and should therefore not proceed to referendum. The Council accepted this recommendation at a Cabinet meeting on 27 June 2018.
- 6.4 Following this, the neighbourhood forum developed an updated version of the neighbourhood plan. The neighbourhood forum ran a public consultation on this new version of the plan between 3 April and 16 May 2019, as required under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012. Details of the Forum’s consultation activities across both versions of the neighbourhood plan were set out in the consultation statement (and three appendices) provided as part of the formal submission of the plan.
- 6.5 The neighbourhood forum submitted the draft neighbourhood plan and accompanying documents to the Council on 23 October 2019, in accordance with Regulation 15 of the Neighbourhood Planning (General) Regulations



2012. On 18 December 2019, Cabinet agreed that the submission met the statutory requirements set out in paragraph 6 of Schedule 4B of the TCPA 1990 and therefore should be publicised under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 and taken forward to Examination. It was also agreed in Cabinet that the Council should proceed to appoint an independent Examiner with the consent of the neighbourhood forum in accordance with Paragraph 6 of Schedule 4B of the TCPA 1990 (as amended).

- 6.6 It was noted in the Cabinet report that this decision was only to consider the draft plan against the statutory requirements set out in paragraph 6 of Schedule 4B of the TCPA 1990. In particular, the Council had to be satisfied that a basic condition statement had been submitted but it was not required to consider whether the draft plan actually met the basic conditions. It is only after the independent examination has taken place and after the examiner's report has been received that the Council comes to its formal view on whether the draft NDP meets the basic conditions (Planning Practice Guidance Neighbourhood Planning Paragraph 53).
- 6.7 As required under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012, a consultation run by the Council was held between 9 January and 19 February 2020. A total of 22 representations were received as part of this consultation. As part of these representations:
- Comments from Thames Water, the Pan Peninsula Residents' Association, and an individual resident expressed support for the plan.
  - The Environment Agency, Historic England, Natural England, and Surrey County Council expressed no comment on the plan.
  - Comments from National Grid, Port of London Authority, and Sport England took a neutral position on the plan.
  - Comments were received from 7 developers (Ashbourne Beech, Ballymore, Berkeley Homes, Chalegrove Properties, Robert Ogden Indecon, Rockwell Property, and Tide Construction), all of which expressed concern about sections of the plan. A representation from One Housing Group also expressed concern about the sections relating to estate regeneration.
  - Comments from the Canal and River Trust, GLA, and TfL also expressed a need for some changes to specific elements of the plan, while noting that the remainder of the plan did not raise any concerns for them.
  - The Council also submitted a lengthy representation, setting out concerns with the ability of a number of sections of the plan to meet the basic conditions, particularly around the requirement in the NPPF for policy to be clearly drafted. The Council's representation included a number of suggestions for modifications that could be made to the plan to bring it in line with the basic conditions.
- 6.8 In February 2020, with the agreement of the neighbourhood forum, the Council once again appointed Mr John Parmiter as the Independent Examiner of the plan. Following the end of the Regulation 16 consultation, all

representations were sent to him, and he commenced his examination on 20 February 2020.

- 6.9 The final examiner's report was received by the Council and the neighbourhood forum on 14 April 2020, and published on the Council's website on 18 April 2020. The report was accompanied by an appendix, a version of the neighbourhood plan edited by the examiner, with tracked changes showing, to demonstrate a number of recommended modifications to the drafting. This has also been published on the Council's website.

## **7 CONSIDERATION OF THE ISLE OF DOGS 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 Isle of Dogs 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. The examiner also provided a second document as part of his report, which is a tracked change edited version of the neighbourhood plan to show numerous small drafting changes. This document is attached as appendix 2.

### **Basic Conditions**

- 7.4 Paragraph 2 of the examiner's report states: "I have concluded that the plan does meet the Basic Conditions". However, paragraph 3.21 elaborates that some modifications are necessary for this to be the case:

"I have concluded that while the neighbourhood plan can be seen to be in general conformity with the strategic policies of the development plan for the area, it needs to a) be modified where some policies are potentially undermining of the strategic objectives; and b) recognise the strategic planning context much more overtly, in order to meet the basic conditions"

- 7.5 Paragraph 4.10 notes a need for a

“number of minor drafting changes – necessary to bring the whole of the plan into a consistent and clear whole, including supporting text, to meet the basic conditions, particularly [National Planning Policy] Framework [paragraph] 16(d) – that plans must: *contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals*” (examiner’s emphasis).

7.6 Beyond a general need to redraft some of the plan text to bring it in line with NPPF paragraph 16(d), a number of specific problems with relation to the basic conditions are highlighted:

- Policies D1, D2, ES1, and RB1 should all be modified in line with the suggestions made by the Council at the Regulation 16 consultation, in order to bring them in line with the basic conditions.
- Policy SD1 does not meet the basic conditions without modifications, as it appears to require a standard beyond those of the building regulations and the optional technical standards, contrary to Written Ministerial Statement of 25 March 2015 on building standards.
- Policy AQ1 is judged to represent unnecessary duplication contrary to national guidance, and is recommended to be moved to the Annex and reframed as an aspiration.

7.7 The examiner also recommends significant changes to the Annex of the neighbourhood plan. He notes in paragraph 12.3 that an annex would “normally be outside the scope of the examination”. However, in this instance,

“the approach taken in the plan gives, in my view, a confusing message to users of the plan; as does the framing of aspirations that follow, many of which are described as ‘provisions’ – even ‘requirements’ – and the framing of each aspiration in the same way graphically as policies (in a box)”.

7.8 He continues, in paragraph 12.4,

“therefore, in order to meet the Basic Conditions and to achieve the clarity required by Guidance, I recommend that the Annex be moved to the end of the plan document and that the text be modified, in all cases, to replace ‘provisions’ or ‘requirements’ with ‘aspirations’ and to clarify elsewhere that the aspirations are not to be taken into account as part of the development management process”.

## **Legal Compliance**

7.9 Paragraph 3 of the examiner’s report states “I have concluded that, subject to certain modifications, the plan would meet the legal requirements”. He does not go on to explicitly state which modifications are related to the legal requirements rather than the basic conditions. However, in paragraph 4.8, he describes the introduction to the ‘summary’ section of the plan as going

“beyond the use and development of land”, which references the legal requirement that the plan should relate to the use and development of land.

- 7.10 Paragraph 14.1 concludes that “subject to the modifications I am recommending, the plan will meet the Basic Conditions and the legal requirements”.

### **Council’s Assessment**

- 7.11 The Council agrees with the examiner’s assessment that the plan can meet the basic conditions with some modification. During the Regulation 16 consultation, the Council expressed concern that the plan was not adequately in conformity with paragraph 16(d) of the NPPF and paragraph 041 of the PPG on neighbourhood planning, both of which require policies to be clearly drafted in order to be used by decision makers. The modifications recommended by the examiner address this issue by making a significant number of drafting changes.
- 7.12 The Council had also previously expressed concern about whether policy D1 was in general conformity with strategic policies at the local, regional and national level. The examiner has addressed this issue in his report as well, noting that “the drafting of the policy needs to avoid creating an embargo” and that “the plan’s approach is too broad and all-encompassing without the robust and proportionate evidence to justify it” (paragraph 5.7). The examiner’s recommended modifications to the policy are those proposed by the Council at the Regulation 16 consultation, and the Council is therefore satisfied that the modified policy meets the basic conditions.
- 7.13 The Council agrees with the examiner’s assessment regarding the legal compliance of the plan, and the need to delete the introductory part of the ‘summary’ section and to clearly mark the annex to make clear that elements of the plan which do not relate to the use and development of land are intended as aspirations rather than planning policy.
- 7.14 On four instances, the Council has not fully agreed with the examiner. The TCPA 1990 Schedule 4B paragraph 13 sets out that if the Council proposes to differ from the examiner’s recommendations, and the reason for that difference is the emergence of new evidence or a new fact, or a different view taken on a particular fact, the Council must invite further representations and potentially submit the issue to independent examination. In all four of these instances, the Council does not consider that the difference from the examiner’s recommendation relates to a disagreement over evidence or facts, or the emergence of new evidence or facts – but rather to ensure that the final version of the plan meets the basic conditions. Therefore, it is considered that no additional consultation or examination is needed.
- 7.15 In paragraph 4.7 the examiner has recommended the glossary be deleted, and has given convincing reasons why the glossary as submitted was contrary to the basic conditions. However, after discussion with the Forum, it was felt useful to include a list of acronyms as an appendix to aid readers of

the plan. This is considered in line with the guidance in paragraph 16(d) of the NPPF and paragraph 041 of the PPG on Neighbourhood Planning on the need for clarity and a lack of ambiguity in neighbourhood plans.

- 7.16 The examiner recommended some minor drafting changes to the 'Vision and Objectives' section of the plan, which would remove some wording that was no longer reflected in the plan policies. After discussion with the Forum, it is agreed that this section was intended to function as historical context for the plan, rather than as a set of objectives that was reflected in the plan's policies. The vision and objectives were developed by the Isle of Dogs community prior to the plan, and were used to inform the topics the plan focused on, but not to inform the actual policies on those topics. The wording has therefore been kept the same as the submission version, as they are considered to form a record of the objectives agreed by the community; and the whole section has been added to the 'Context' section of the plan, to make clear that it sets the context for the plan only. Consequently, the examiner's recommendation that the 'Summary' section be combined with the 'Vision and Objectives' section has not been implemented, and the 'Summary' remains a separate section. This is considered in line with the guidance in paragraph 16(d) of the NPPF and paragraph 041 of the PPG on Neighbourhood Planning on the need for clarity and a lack of ambiguity in neighbourhood plans, by ensuring that the function of different sections of the plan is clear.
- 7.17 In paragraphs 5.7 and 7.12 of the final version of the neighbourhood plan, the examiner has added the words "the Forum consider that" to the supporting text explaining how a policy works. In both cases, the Council does not find this to be appropriate wording for a policy – to meet the basic condition for clarity, there should be no confusion between the policies and the annex aspirations, and this wording suggests that there are some aspects of the policies that are only equivalent to aspirations. After discussion with the Forum, the Council agrees that the recommendation should not be accepted. This is considered in line with the guidance in paragraph 16(d) of the NPPF and paragraph 041 of the PPG on Neighbourhood Planning on the need for clarity and a lack of ambiguity in neighbourhood plans. The examiner has recommended a number of similar wording changes in the Annex, and these changes have been accepted in all cases.
- 7.18 In paragraph 5.12 of the final version of the neighbourhood plan, the examiner has added wording to say that notification of changes to working hours should 'comply' with the Council's Statement of Community Involvement ('SCI'). This has been changed to say the notification process should 'consider' the relevant sections of the SCI. Policy CC2 puts the onus on developers to notify the local community of changes, and developers are not bound by the Council's SCI, so the encouragement to consider what the SCI says seems more appropriate. This is considered in line with the guidance in paragraph 16(d) of the NPPF and paragraph 041 of the PPG on Neighbourhood Planning on the need for clarity and a lack of ambiguity in neighbourhood plans.

- 7.19 Some minor additional changes have also been implemented in the supporting text of the final version of the neighbourhood plan. The additional changes emerged from officers identifying areas where ambiguity remained after the examiner's modifications had been implemented, and from discussions with the Forum around how best to counter that ambiguity. The changes have been made to aid clarity in situations where there was some uncertainty over the wording, and therefore to bring the plan into conformity with paragraph 16(d) of the NPPF and paragraph 041 of the PPG on Neighbourhood Planning on the need for clear drafting, and thus to bring the plan in line with the basic conditions. The additions include clarification on infrastructure impact assessments required under policy D1; an explanation of how developers can demonstrate they have undertaken 'reasonable endeavours' to secure a meanwhile use for their site under policy ES1; and a clarification on the reporting requirement for developers to demonstrate whether they have met the Home Quality Mark under policy SD1.
- 7.20 Appendix 3 is a 'clean' edited version of the neighbourhood plan, incorporating the examiner's recommendations and the additional changes incorporated to further aid clarity. Appendix 4 is a table setting out the Council's response to each of the examiner's specific recommendations in his final report, and explaining the reasoning behind the additional changes.
- 7.21 The Council agrees that the final version of the neighbourhood plan contained in Appendix 3 meets the basic conditions and legal requirements, and can proceed to referendum.

## **8 REFERENDUM AND IMPLICATIONS RELATING TO THE CORONAVIRUS PANDEMIC**

- 8.1 The examiner recommends that the neighbourhood plan should proceed to a referendum subject to the proposed modifications, and that the referendum area should be the same as the designated neighbourhood area. The Council agrees with both of these recommendations.
- 8.2 On 7 April 2020, the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 came into force. Regulation 13 delays neighbourhood planning referendums until "the ordinary day of election in 2021", which is 6 May 2021.
- 8.3 Officers are not aware of any regulations that affect the standard five-week deadline between a Council receiving the examiner's final report and the requirement to take a decision on the recommendations the final report contains. Therefore, the Council is proceeding with making a decision about whether to accept the examiner's recommendations to modify the plan and submit it to a referendum, even though that referendum will subsequently be postponed.
- 8.4 The Planning Policy Guidance on Neighbourhood Plans was also updated on 7 April 2020, to include paragraph 107 (reference ID 41-107-20200407). This

paragraph states that “where the local planning authority has issued a decision statement (as set out under Regulation 25 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”.

- 8.5 On this basis, the neighbourhood plan will have significant weight in relevant planning decisions from the day of this decision until the referendum is held on 6 May 2021. 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.

## **9 EQUALITIES IMPLICATIONS**

- 9.1 The recommendations in this report would see new policy implemented in the Isle of Dogs 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.
- 9.2 The Basic Conditions Statement submitted as part of the neighbourhood plan submission contains an Equalities Impact Assessment, which similarly concludes that impacts of the neighbourhood plan will be neutral or positive for all protected groups.

## **10 OTHER STATUTORY IMPLICATIONS**

- 10.1 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.
- 10.2 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.
- 10.3 Consultations: The neighbourhood plan has undergone all the stages of consultation required under statute (and if this plan is considered a

continuation of the previous Isle of Dogs Neighbourhood Plan, all stages have been undergone twice). There is no requirement for further consultation.

- 10.4 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).
- 10.5 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. It is considered that the minor deviations from the examiner's recommendations are justified, and present a low risk of intervention.
- 10.6 Crime/Safeguarding/Data Protection: no implications.

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

- 11.1 There are no material financial implications emanating from this report. Costs associated with conducting the Isle of Dogs Neighbourhood Plan referendum will be met from a combination of existing revenue budgets and Government funding of £20k.
- 11.2 Significant costs will be incurred implementing the plan should the referendum be successful and will be subject of separate reports.

## **12 COMMENTS OF LEGAL SERVICES**

- 12.1 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.
- 12.2 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.



- 12.3 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.
- 12.4 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.
- 12.5 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.
- 12.6 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.
- 12.7 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.
- 12.8 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.
- 12.9 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.

- 12.10 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.
- 12.11 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.
- 12.12 The Mayor will note that paragraphs 6.3 to 6.7 of the report explain that public consultation was undertaken between 3 April and 16 May 2019 and 9 January and 19 February 2020 in satisfaction of the general public law duties.
- 12.13 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 6.3 to 6.7 of the report set out the extent of the consultations exercises undertaken and demonstrate a fair and legally robust process.

- 12.14 Further, paragraphs 9.1 and 9.2 of this report state that an Equalities Impact Assessment Checklist has been completed in relation to the proposed policy implications arising from implementing the neighbourhood plan. Additionally, an Equalities Impact Assessment was prepared and submitted along with the Basic Condition Statement. Both documents concluded that no negative equalities impacts would arise from the recommendations in this report and

implementation of the Neighbourhood Plan. The assessments demonstrate 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 – Isle of Dogs neighbourhood Plan Final Report of Examination
- Appendix 2 – Examiner’s Edited Version of the Neighbourhood Plan
- Appendix 3 – Referendum Version of the Neighbourhood Plan
- Appendix 4 – Response to Examiner’s Recommendation and Additional Changes
- Appendix 5 – Equalities Impact Assessment Checklist

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

- None

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

Steven Heywood