


<b>Cabinet</b>	 <b>TOWER HAMLETS</b>
30 June 2021	
<b>Report of:</b> Ann Sutcliffe, Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Roman Road Bow Neighbourhood Area – Boundary Correction</b>	

<b>Lead Member</b>	<b>Councillor Eve McQuillan, Cabinet Member for Planning and Social Inclusion</b>
<b>Originating Officer(s)</b>	Steven Heywood, Principal Planning Officer, Plan Making Team Marc Acton Fillion, Planning Officer, Plan Making Team
<b>Wards affected</b>	Bow East; Bow West
<b>Key Decision?</b>	No
<b>Forward Plan Notice Published</b>	N/A
<b>Reason for Key Decision</b>	N/A
<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

As part of the consultation on the Roman Road Bow Neighbourhood Plan, it was identified that the boundary of the neighbourhood planning area includes a small section that is part of the London Legacy Development Corporation (LLDC) area. This stems from an error in the designation of the neighbourhood forum, when the boundary between LBTH and LLDC was believed to run along the A12. In fact, the boundary runs slightly to the west of the A12. As LBTH cannot designate land within the LLDC area, the boundary of the neighbourhood plan area needs to be amended to match the boundary between LBTH and LLDC, to allow the neighbourhood planning process to move forward.

### Recommendations:

The Cabinet is recommended to:

1. Approve the formal amendment of the neighbourhood planning area to the boundaries shown in appendix 1.

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

- 1.1 The Roman Road Bow Neighbourhood Plan underwent statutory consultation from 15 March to 27 April 2021 under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012. As part of that consultation it was identified that part of the neighbourhood planning area as currently designated falls within LLDC.
- 1.2 The Council cannot designate land for planning purposes within area under the LLDC's authority. Officers discussed options with the Roman Road Bow Neighbourhood Forum and LLDC planning officers, including the option of retaining the existing boundary and cooperating with LLDC to develop a trans-boundary neighbourhood plan.
- 1.3 Given the added complication and time required to develop and adopt a trans-boundary neighbourhood plan, and the relatively small amount of land that falls within LLDC, the neighbourhood forum expressed a preference to amend the boundary to remove the area falling within LLDC.
- 1.4 Officers discussed the process to be followed with the Council's legal team, who also sought external counsel advice, which concluded that it would be appropriate to correct an error in the boundary as long as the correction was properly publicised. Counsel advice also advised that the neighbourhood forum should consult on the impact of the changed boundary on the neighbourhood plan, although this decision is in the hands of the forum.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The alternative to making these changes would be to leave the neighbourhood area boundary as designated in 2017. However, as the Council has no authority at this time to designate land that sits within the LLDC for planning purposes, this is not seen as a realistic alternative, and would create problems for further consultation and examination of the neighbourhood plan.
- 2.2 On this basis, it is considered that there are no reasonable alternative options to the correction of the eastern boundary of the neighbourhood area to match the boundary between Tower Hamlets and the LLDC planning areas.

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

- 3.1 This report provides an overview of the assessment of the Spitalfields Neighbourhood Plan submission.
- 3.2 The content of this report is as follows:

- Section 4: provides an introduction to Neighbourhood Planning
- Section 5: discusses the original report and the error it contained
- Section 6: sets out the proposed amendment to the boundary of the neighbourhood planning area and the impacts on the neighbourhood planning process.

#### **4. INTRODUCTION TO NEIGHBOURHOOD PLANNING: A COMMUNITY-LED PROCESS**

- 4.1. The Localism Act 2011 amended the Town and Country Planning Act (TCPA) 1990 to make provision for neighbourhood planning, which gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.
- 4.2. The legislative provisions concerning neighbourhood planning within the TCPA 1990 are supplemented by the Neighbourhood Planning (General) Regulations 2012 (as amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015) and the Neighbourhood Planning (Referendum) Regulations 2012.
- 4.3. Neighbourhood planning provides communities with the ability to prepare a Neighbourhood Development Plan (NDP) and/or Neighbourhood Development Order (NDO), in areas designated by the LPA on application as a neighbourhood area. Neighbourhood planning powers may only be exercised by bodies authorised by the legislation. In a neighbourhood area where there is a parish council, only a parish council may make proposals for a NDP or NDO. In neighbourhood areas without a parish council, only a body designated by the LPA as a neighbourhood forum may bring forward proposals for that neighbourhood area.
- 4.4. NDPs set out policies in relation to the development and use of land in all or part of a defined neighbourhood area and may include site allocations, or development principles, for allocated sites. They may also include character appraisals and seek to establish community facilities and/or identify areas for public realm improvements. NDOs allow for planning permission to be granted in the circumstances specified and exempt certain types of development, or development in certain areas, or on particular sites, from the usual requirement to apply to the LPA for a grant of planning permission.
- 4.5. Both NDPs and NDOs need to be in general conformity with the strategic policies of the Council's Development Plan: the Tower Hamlets Local Plan (2020) and the London Plan (2021).

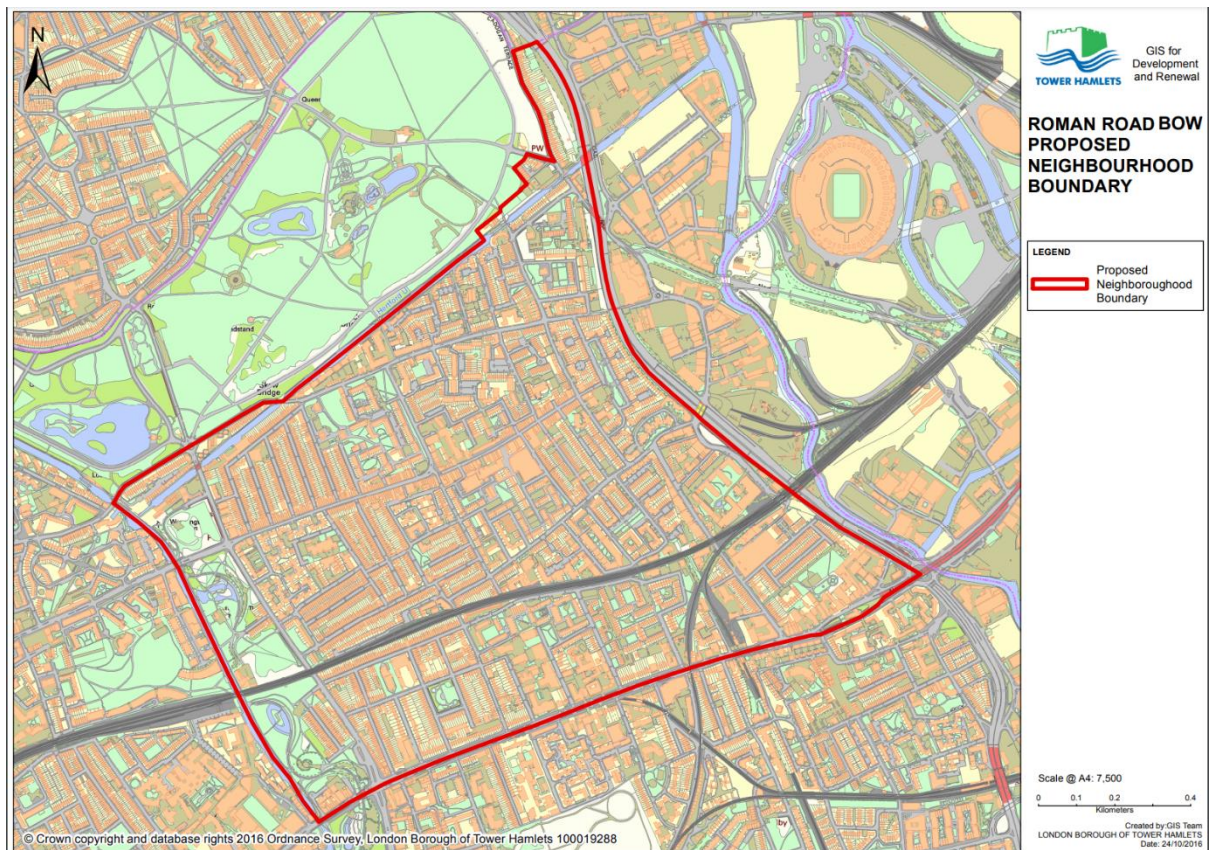
- 4.6. An NDP that has been 'made' in accordance with the relevant legislative provisions forms part of the Council's statutory Development Plan (comprising the Local Plan and London Plan) and, as such, will be accorded full weight when determining planning applications in the neighbourhood area. NDPs 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. THE ROMAN ROAD BOW NEIGHBOURHOOD AREA – THE 2017 APPLICATION**

- 5.1. The Roman Road Bow Neighbourhood Area was designated through an Executive Mayoral Decision taken on 6 February 2017. The report for this decision is attached as Appendix 3 of this report, referred to as the 2017 report from hereon.
- 5.2. Before this decision was made, the application for a neighbourhood area went through the relevant processes as set out in regulations. These are discussed in detail in section 5 of the 2017 report. In summary, these processes are:
- A relevant body (in this case, the prospective Roman Road Bow Neighbourhood Forum) submits an application to the local planning authority to designate a neighbourhood planning area. This must include a map of the relevant area, and a statement explaining why it is appropriate to designate this area for neighbourhood planning purposes.
  - The LPA organises a consultation on the application, which must last at least six weeks.
  - The LPA makes a decision on the application. In doing so, the LPA may modify the boundaries of the area to be designated, where this is considered appropriate. In deciding what area to designate, the LPA should give consideration to a number of factors set out in the Planning Practice Guidance on Neighbourhood Planning (see 2017 report paragraphs 5.11-12)
- 5.3. In the case of the Roman Road Bow neighbourhood area, the application was submitted on 4 November 2016; and consultation took place between 11 November and 23 December 2016. Eighteen representations were received in response to the consultation, and these are considered in paragraphs 6.9-15 and 6.50-52 of the 2017 report. The area applied for as part of the application is shown below (and attached as Appendix 2).



- 5.4. Para 6.17 of the 2017 report described the proposed neighbourhood area as consisting of “part of the ward of Bow West, excluding Victoria Park, and part of the ward of Bow East, excluding Victoria Park and the part of Bow East which is administered by the London Legacy Development Corporation Planning Authority”.
- 5.5. Para 6.20 elaborated that “the eastern boundary is the A12, which is both a hard boundary and the administrative boundary between the London Borough of Tower Hamlets and the London Legacy Development Corporation”.
- 5.6. The decision was taken to designate the neighbourhood area as applied for by the neighbourhood forum, and as described in these two paragraphs, without modifications.
- 5.7. The two paragraphs referenced above show a clear understanding that Tower Hamlets is not able to designate any part of the LLDC area for planning purposes. However, the description in para 6.20 of where the LLDC boundary lies, and its illustration on the map of the neighbourhood area were inaccurate. The boundary between the Tower Hamlets and LLDC planning areas does not run smoothly and directly along the A12, but actually runs in an irregular line somewhat to the west of the A12. Paragraph 6.17 is correct in saying that the neighbourhood area should include all of Bow East ward apart from Victoria Park and the LLDC area, but this is not reflected in the map of the designated area. The correct boundary is set out in section 6 of this report and in Appendix 1.

- 5.8. The error in the map included as part of the neighbourhood planning area application was not recognised by planning officers when the application was submitted, and was not raised by any of the consultation responses. No consultation response was received in 2017 from the LLDC. The neighbourhood planning area was therefore designated with the error of including part of the LLDC planning area. Had the error been recognised, the LPA would have had the ability to modify the prospective area to remove the LLDC land.
- 5.9. It should be noted that this is a clear and verifiable error, rather than a re-interpretation of the Council's position. The Council did not, and still does not, have the authority to designate land within the LLDC area for planning purposes. Therefore, the boundary of the neighbourhood area in the 2017 report is objectively incorrect, as it contains part of the LLDC area, which the Council did not have the authority to designate.

## **6. THE PROPOSED CORRECTION TO THE NEIGHBOURHOOD AREA**

- 6.1. Between March and April 2021 a consultation was held on the Roman Road Bow Neighbourhood Plan – this was the first formal stage of consultation on the plan, arranged under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012. This plan had been prepared by the Roman Road Bow Neighbourhood Forum on the basis of the designated area as set out in the erroneous map from the 2017 report.
- 6.2. Officers from the LLDC contacted Tower Hamlets planning officers during the consultation to highlight that the designated area included part of the LLDC. A formal consultation response was also submitted. This was the first time that the error in the 2017 report and in the map of the designated neighbourhood area had been raised with Tower Hamlets planning officers.
- 6.3. Tower Hamlets planning officers acknowledged that a mistake had been made as part of the 2017 report, and held discussions with the neighbourhood forum and LLDC planning officers to determine the best way to address this problem. The two alternatives were for the neighbourhood forum to apply to the LLDC for the small area of land within the LLDC to be formally designated as part of a cross-boundary forum; or for the forum and Tower Hamlets to work to correct the error in the 2017 report and remove the LLDC land from the designated neighbourhood planning area.
- 6.4. Given the complexities of operating a cross-boundary neighbourhood forum, the amount of time it would take to apply for designation with the LLDC, and the small area of the land involved, the neighbourhood forum's decision was to ask Tower Hamlets to fix the error from the 2017 report and remove the LLDC land from the neighbourhood planning area.
- 6.5. Following discussions with the legal team, this is considered by officers to be an acceptable course of action.



- 6.6. The LPA has the ability, when considering neighbourhood planning area applications, to modify the designated area to be different from that which the prospective neighbourhood forum applies for. The 2017 report should have recommended that the boundary be modified to match the accurate boundary between Tower Hamlets and the LLDC – and it is the belief of the author of this report that the 2017 report would have recommended this modification, if the error had been spotted at the time.
- 6.7. As Tower Hamlets Council has no ability to designate land within the LLDC for planning purposes, the correction of the error is essential in order for the neighbourhood plan to progress. If submitted for examination at the present time, the neighbourhood plan would be attempting to apply planning policies to an area of a different LPA, and would almost certainly be found 'unsound' on that basis. The only way to address this issue is to correct the boundary to include only areas that are within the Tower Hamlets LPA.
- 6.8. The proposed correction to the neighbourhood area is set out below, and attached as Appendix 1. In this corrected version, the neighbourhood area consists of all of Bow West and Bow East wards except for Victoria Park and the parts that are included in the LLDC planning area. The boundary is exactly the same as that which was designated in 2017, except for the correction of the exact position of the boundary between Tower Hamlets and the LLDC.



Roman Road Bow Amended Neighbourhood Planning Area

- 6.9. This correction removes the following areas from the Roman Road Bow Neighbourhood Area:



- The area between Payne Road, the A12, and the A11 (McDonalds drive-through site)
- The area between Wick Lane and the A12
- A small strip of land between the A12 and the back of buildings on Candy Street, Wendon Street, and the Thames Water depot on Wick Lane
- A small strip of land between the A12 and the back of housing plots on Cadogan Terrace

6.10. As stated above, a first statutory consultation on the Roman Road Bow Neighbourhood Plan took place between March and April 2021. This consultation was based on the erroneous boundary from the 2017 report. Officers will recommend to the neighbourhood forum that, following the amendment of the boundary, a second Regulation 14 consultation be held, but with a specific focus on asking for representations relating to the impacts of the boundary change on the neighbourhood plan.

6.11. This will not be a consultation on the correction of the boundary itself. The understanding of planning officers is that a consultation is not required on the correction of the boundary – as this is the correction of an error from an earlier report, and is only removing land from the neighbourhood area that the Council did not have the authority to designate in the first place. A consultation in line with the Neighbourhood Planning (General) Regulations 2012 was undertaken as part of the original application, and was taken into account in designating the neighbourhood area. There is no reason to reconsider the other boundaries of the neighbourhood area, and no proposal to do so – there is therefore no basis for re-consulting.

6.12. If the correction to the boundary is made, officers will publicise the decision in line with Regulation 7 of the Neighbourhood Planning (General) Regulations 2012 by publishing a decision statement on the Council's website.

## **7. EQUALITIES IMPLICATIONS**

7.1 An Equalities Impact Assessment Screening was undertaken as an appendix to the 2017 report, and can be seen in pages 31-39 of the attached Appendix 3. This concluded that a full Equalities Assessment was not needed. As this report is only proposing a correction to an error in the original report, this conclusion still applies.

## **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 There are considered to be no other statutory implications to this decision.

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

9.1 There are no financial implications emanating from this report which seeks to amend the boundary of the neighbourhood planning area without having to restart the Roman Road Bow neighbourhood planning process.

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

10.1. The legal issue in this matter is whether the Council is able to remedy the error in the eastern boundary of the neighbourhood area designation without having to start the whole neighbourhood plan process over again.

10.2 The Courts have held that it is open to a public authority to revisit and remake a decision which was based on a fundamental and objectively verifiable error of fact. This principle is subject to the ordinary principles of fairness in administrative law.<sup>1</sup>

10.3 There is no specific statutory power that enables the correction of an error in the designation of a neighbourhood area boundary. However, it is open to the Council to amend a designation in order to correct a genuine error which was the result of a mistake and given:

- The general power of public authorities to revisit and remake decisions which were previously made based on clear errors of fact;
- The statutory scheme does not contain any prohibition on such a correction being contemplated;
- That other parts of the regime give the power for correction of errors;
- That there is no prejudice caused to any party as a result of the proposed correction provided that adequate publication and consultation is undertaken on the correction; and
- That an inability to correct the error would appear to run counter to the purposes of the neighbourhood planning process.

10.4 It is appropriate for Cabinet to approve the amendment of the boundary designation in this instance as Cabinet made the original decision which contained no delegation to correct any errors.

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

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<sup>1</sup> Chaudhuri v General Medical Council [2015] EWHC 6621 (Admin)

**Linked Report**

- N/A

**Appendices**

- Appendix 1: Corrected Boundary of Roman Road Bow Neighbourhood Area
- Appendix 2: 2017 Boundary of Roman Road Neighbourhood Area
- Appendix 3: 2017 Report on Designation of Roman Road Bow Neighbourhood Area

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

- NONE

**Officer contact details for documents:**

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