

<b>COUNCIL</b>	 <b>TOWER HAMLETS</b>
5 October 2022	
<b>Report of:</b> Ann Sutcliffe, Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Spitalfields Neighbourhood Plan – Post-Referendum Decision</b>	

<b>Lead Member</b>	<b>Councillor Kabir Ahmed, Cabinet Member for Regeneration, Inclusive Development and Housebuilding</b>
<b>Originating Officer(s)</b>	Steven Heywood, Principal Planning Officer; Marc Acton Fillion, Planning Officer
<b>Wards affected</b>	Spitalfields & Banglatown; Weavers
<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 examiner's report on the Spitalfields Neighbourhood Plan was received by the Council and the Spitalfields Neighbourhood Forum on 15 July 2021, and recommended that the neighbourhood plan be sent to referendum with a number of modifications. The Council accepted this recommendation and two referendums were arranged for 11 November 2021 – one for residents and one for businesses. The residential referendum voted 'yes' to the neighbourhood plan; the business referendum voted 'no'. Following the outcome of the referendums, the Council must now make a decision on whether to formally 'make' the neighbourhood plan and adopt it as part of the development plan for the borough.

### **Recommendations:**

The Council is recommended:

1. To note the result of the Spitalfields Neighbourhood Plan referendums and decide whether or not to adopt the neighbourhood plan as part of the development plan for the area.
2. To set out reasons for the decision whether to adopt the plan or not, to be included in a decision statement.

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

- 1.1 Following a referendum or referendums on a neighbourhood plan, the Council must make a decision on whether or not to adopt the plan. The referendums for the Spitalfields Neighbourhood Plan resulted in two contradictory results – the residents voted in favour of the neighbourhood plan and the businesses voted against. Under planning legislation, if the result had been entirely in favour, the Council would have been obligated to adopt the plan; if the result had been entirely against, the Council would have been obligated not to adopt it. In the case of split referendums, the Council is able to determine whether or not it wants to adopt the neighbourhood plan.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The two alternatives are to adopt the plan or reject the plan. If the plan is adopted, it will become part of the development plan for the Spitalfields Neighbourhood Area, and will be used in determining planning applications in that area. If the plan is rejected, the plan will no longer hold any weight in planning decisions in the area.
- 2.2 There are no other alternative options that are considered realistic, as neighbourhood planning legislation clearly sets out that a decision on whether or not to adopt the plan must be taken. There is, for example, no provision within the legislation that would allow the Council to further modify the plan following referendum; or to send the plan back for a second round of referendums. Any attempt to take these approaches would likely lead to intervention by the Secretary of State and possibly legal challenge.
- 2.3 Council could decide to defer this decision to a later date, but this is not recommended. The referendums took place in November 2021, and this report will reach Council in October 2022. Almost a year has therefore passed with no decision taken. While there is no statutory deadline for taking a decision when the referendum results are split in this way, the legislation is clear that a decision must be taken, and a deferral could be seen as leading to an unreasonably lengthy delay in resolving this question, and could potentially lead to a legal challenge of the Council's actions.

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

- 3.1 This report provides an assessment of the referendum and adoption of the Spitalfields Neighbourhood Plan.
- 3.2 The content of this report is as follows:
- Section 4: offers an introduction to Neighbourhood Planning
  - Section 5: outlines the relevant legislative framework and guidance
  - Section 6: provides an assessment of the referendum of the Spitalfields Neighbourhood Plan

- Section 7: sets out factors to be considered in deciding whether to adopt the Spitalfields Neighbourhood Plan

#### **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 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 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. Since the 2020 changes to the Planning Practice Guidance on Neighbourhood Planning (paragraph 107), NDPs can be given significant weight in determining relevant planning applications as soon as the decision has been taken to hold a referendum – even before that referendum has been held.
- 4.8. Under section 61H of the Town and Country Planning Act 1990, an LPA may designate a Neighbourhood Planning Area as a 'business area' if they consider the area to be wholly or predominantly business in nature. In such instances, two referendums must be held – one of residential voters, and one of businesses.

### **Community Infrastructure Levy**

- 4.9. 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.
- 4.10. 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.
- 4.11. 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".
- 4.12. 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 making of NDPs following a referendum.
- 5.2. In accordance with Section 38A(4) of the Planning and Compulsory Purchase Act (PCPA) 2004, a local planning authority:
- (a) Must make a neighbourhood development plan [...] if in each applicable referendum under [Schedule 4B of the TCPA 1990] more than half of those voting have voted in favour of the plan, and*
  - (b) If paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held and, in any event, by such date as may be prescribed.*
- 5.3. Section 38A(5) of PCPA 2004 states that if:
- (a) There are two applicable referendums [...] (because the plan relates to a neighbourhood area designated as a business area under section 61H of [the TCPA 1990], and*
  - (b) In one of those referendums (but not the other) more than half of those voting have voted in favour of the plan,*
- the authority may (but need not) make a neighbourhood development plan to which the proposal relates.*
- 5.4. Section 38A(6) of PCPA 2004 adds that:
- The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the plan would breach, or would otherwise be incompatible with, and EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).*
- 5.5. The Planning Practice Guidance on Neighbourhood Planning issued by the government notes four particular EU obligations, as incorporated into UK law, that may be of particular relevance to neighbourhood planning. These are the Strategic Environmental Assessment Directive; the Environmental Impact Assessment Directive; the Habitats Directive; and the Wild Birds Directive (reference 41-078-20140306). The Environmental Impact Assessment Directive would apply to neighbourhood development orders aimed at granting planning permission on a specific site, while the Strategic Environmental Assessment Directive would apply to plans for a wider area such as the Spitalfields Neighbourhood Plan. Although the UK has now left the EU, the requirements of these directives are still incorporated into UK law at this time.
- 5.6. The Neighbourhood Planning (General) Regulations 2012 prescribe a time limit for making a neighbourhood plan following a successful referendum. Regulation 18A (as inserted by the Neighbourhood Planning (General) and

Development Management Procedure (Amendment) Regulations 2016) states:

*(1) The date prescribed for the purposes of Section 38A(4)(b) of the 2004 Act is the date which is the last day of the period of 8 weeks beginning with the day immediately following that on which the last applicable referendum is held.*

- 5.7. This time limit does not apply if a legal challenge is brought in relation to the decision to hold a referendum or around the conduct of the referendum. The time limit also does not apply unless Section 38A(4) of the PCPA 2004 applies – that is, it only applies if all applicable referendums vote in favour of the neighbourhood plan.
- 5.8. Following a decision to make a neighbourhood plan, the local planning authority must publish (and send to the qualifying body and any other parties who asked to be informed of the decision) a decision statement setting out the reasons for the decision. This is set out under PCPA Section 38A(9) and (10) and Regulation 19 of the Neighbourhood Planning (General) Regulations 2012.

## **6. ASSESSING THE SPITALFIELDS NEIGHBOURHOOD PLAN REFERENDUM**

- 6.1. This section provides an assessment of procedures undertaken as part of the Spitalfields Neighbourhood Plan referendum, covering
- Consultation and referendum processes
  - Referendum results
  - Post referendum engagement

### **Consultation and Procedural Assessment**

- 6.2. All procedural stages of the neighbourhood plan-making process were correctly followed. The neighbourhood plan underwent two stages of public consultation – one organised by the neighbourhood forum before submission of the plan to the Council, and one undertaken by the Council following the submission.

- 6.3. The Forum set out in some detail the consultation activities they had undertaken in their Consultation Statement, which was part of the submission of the plan to the Council. This included consultation events undertaken to aid the development of the plan, and the more formal stage of consultation once a draft of the plan had been developed. At the formal stage of consultation, the Forum's figures stated that it had received 38 responses from residents, 3 from businesses, 13 from 'local stakeholders' and 9 from statutory consultees. The consultation statement also explains how the responses the Forum received to the consultation were taken into account in updating the plan. The consultation statement is attached to this report as Appendix 3.
- 6.4. The submission of the neighbourhood plan to the Council had to be validated by a planning officer, to confirm that the correct documentation had been submitted. Under the neighbourhood planning legislation, there is no role for planning officers to assess whether the level of consultation is acceptable at this point, only to confirm that an appropriate consultation statement is included. The role of assessing whether the level of consultation is adequate is for the independent examiner of the plan.
- 6.5. Following the submission of the plan to the Council, the Council held a second round of consultation. The purpose of this round of consultation is to gather responses which will be passed on the independent examiner to consider as part of the examination. At this stage of consultation, 49 responses were received. Of this, 16 were identified as coming from businesses, 24 from residents, and 9 from organisational stakeholders (such as TfL, Natural England, and LBTH itself). The majority of consultation responses were supportive of the plan. The most critical response was from the Truman Brewery, who objected to the affordable workspace discount in policy SPITAL7 on viability grounds.
- 6.6. Following the consultation, an independent examiner of the plan was appointed. This was done by procuring a recommendation for a suitable examiner from Intelligent Plans and Examinations, a company which acts as an agency for neighbourhood plan examiners. Their recommendation was that Jill Kingaby would be a suitable examiner for the plan. Ms Kingaby was not known in any capacity to the planning officer or the Forum beforehand, and was therefore considered suitably independent. In her final report, she states "I am an independent examiner, and do not have an interest in any of the land that may be affected by the submitted plan" (Appendix 4, paragraph 1.7).
- 6.7. In assessing the level of consultation undertaken, the examiner stated: "Overall, I am satisfied that the consultation process has been carried out in a very thorough and professional manner. The legal requirements for consultation i.e., procedural compliance, have been met and regard has been had to the advice in the Government's PPG on plan preparation and engagement" (Appendix 4, paragraph 3.9).
- 6.8. The examination was undertaken based on the written representations received, with no public hearing. This is the standard approach for

neighbourhood plans, where public hearings are the exception rather than a matter of course.

- 6.9. The examiner concluded that, with some modifications, the Spitalfields Neighbourhood Plan would meet the basic conditions and other legal requirements of neighbourhood plans, and could therefore proceed to referendum. The need for some modifications is also a standard element of neighbourhood plan examinations, and ensures that plans fully meet the basic conditions and legal requirements for neighbourhood plans. The examiner's final report was issued on 15 July 2021. On 9 August 2021, an Individual Mayoral Decision agreed to implement the examiner's recommended modifications and send the plan to referendum. This was taken as an Individual Mayoral Decision due to the statutory time limit of 5 weeks between receiving the final examiner's report and making such a decision – ordinarily the decision would be made by Cabinet, but no Cabinet meeting was due to be held during this five-week period.
- 6.10. Procedurally, the plan has fulfilled all the necessary steps up to the point of the referendum, and has undergone two rounds of consultation and been examined by an independent examiner, who concluded that the modified version of the plan which was taken to referendum would meet the basic conditions and legal requirements of neighbourhood plans. From the perspective of planning policy, there is consequently no objection to the adoption of the plan.

### **Referendum results**

- 6.11. The referendums on the Spitalfields Neighbourhood Plan were held on 11 November 2021. The referendum area was the same as the Neighbourhood Planning Area. Both referendums asked the question: "Do you want the London Borough of Tower Hamlets to use the neighbourhood plan for the Spitalfields Neighbourhood Planning Area to help it decide planning applications in the neighbourhood area?".
- 6.12. All registered residential voters living within the Neighbourhood Planning Area were able to vote in the residential referendum. There was a total eligible electorate of 4,102.
- 6.13. For the business referendum, all rate-paying businesses in the area were contacted by the Electoral Services team with details of how to register to vote in the referendum. All those who completed the registration forms by the given deadline were eligible to vote. The registered electorate following this process was 132.
- 6.14. In the residential referendum, 552 votes were cast, and two ballots were spoiled. The turnout was 13.46%. This is not a high turnout, but is also not unusually low for a neighbourhood planning referendum. The neighbourhood planning database compiled by DLUHC shows that, as of 30 May 2022, 52 other neighbourhood planning residential referendums had seen a turnout of 13% or less. Within London, two neighbourhood plan residential referendums



held in Westminster and Camden in September and October 2021 had 10% and 9% turnouts (Fitzrovia West and Queen's Park respectively); and 2019 referendums in Harlesden (Brent) and South Bank and Waterloo (Lambeth) had turnouts of 11%. The only other neighbourhood planning referendum held in Tower Hamlets to date was on the Isle of Dogs Neighbourhood Plan, and had a 37% turnout, but turnout would have been boosted as this was held on the same day as the London Mayoral elections.

- 6.15. Of the votes cast in the residential referendum, 298 were for 'yes' and 252 were for 'no'. This is a 54.2% vote for 'yes'. This is one of the lowest positive votes in a neighbourhood planning residential referendum across the country. Since neighbourhood planning was introduced, eleven neighbourhood plans have failed at referendum (i.e., received less than 50% of the vote), and a further five plans received 'yes' votes between 51-53%. The Spitalfields 'yes' vote is the lowest of any neighbourhood plan referendum in London, the next lowest being the 79% 'yes' vote in Fitzrovia West in Westminster/Camden.
- 6.16. In the business referendum, 88 votes were cast, with no ballots spoiled. The turnout was 66.67%. However, it should be noted that to vote in the business referendum, business owners will have had to make an active effort to register, whereas most residential voters will already have been on the electoral roll before the referendum was announced. It is therefore expected that business referendums will have a much better turnout than residential referendums, as business owners who have taken the trouble to register specifically for this poll are subsequently more likely to use their vote. DLUHC does not appear to collate data on business referendums, but a planning officer has researched business referendums in other London boroughs, and determined that the business referendum with the lowest turnout was 38% in Mayfair (Westminster), which is still higher than the highest ever residential turnout in a London residential referendum (Isle of Dogs, 37%). So while the disparity of turnouts between the business and residential referendums is notable, it comes with some caveats.
- 6.17. Of the votes cast in the business referendum, 70 were for 'no' and 18 were for 'yes'. This is a 79.5% vote for 'no'. Data on business referendums does not appear to be collated centrally by DLUHC as it is for residential referendums, so comparisons are difficult – but this is understood to be the first time a neighbourhood plan has failed at a business referendum.
- 6.18. Based on these results, the neighbourhood plan was successful in the residential referendum, and unsuccessful in the business referendum.
- 6.19. This is understood to be the first time since the introduction of neighbourhood planning that a residential referendum and a business referendum have produced different results from one another. This creates a situation where the Council will now have to make their own decision about whether or not to adopt the neighbourhood plan, as the referendum has not produced a clear result for the Council to follow.

## Post-Referendum Engagement

- 6.20. Following the split outcome of the referendums, the Corporate Director of Place wrote to the Spitalfields Neighbourhood Forum on 20 January 2022 to set out the Council's position. The Council asked the Forum to "engage further with business representatives from the Spitalfields Neighbourhood Plan Area to explore the concerns that led to the outcome of the business referendum". The Forum were asked to prepare a statement setting out the main concerns of the business representatives in the discussions, and the Forum's response. This letter, along with the Forum's response, is attached as Appendix 5.
- 6.21. The Forum engaged business representatives and sent their statement to the Council on 19 May 2022. This statement identified two primary groups of business representatives in the area who had opposed the neighbourhood plan during the referendum period: the owners of the Truman Estate, and the Brick Lane Restaurant Association. The Forum engaged both groups, and concluded that "it is our view that the concerns raised by Azmal Mert and Guljar Khan [representing the Brick Lane Restaurant Association] are reasonable and can be overcome, while those raised by Mr. Zeloof [representing the Truman Estate] are disingenuous, purely tactical and cannot be met".
- 6.22. The full details of these discussions and the Forum's response can be seen in Appendix 5. In summary, as a response to the concerns of the restaurant owners, the Forum committed to the following points:
- Renaming the neighbourhood plan to the Spitalfields and Banglatown Neighbourhood Plan – initially on a unilateral basis by the Forum itself, with the intention of attempting to formally change the name of the neighbourhood plan after adoption.
  - Emphasising "the importance of Brick Lane being the world capital of curry and the heart of Banglatown" by submitting a number of non-material amendments to the Council following adoption.
  - Exploring the possibility of slightly expanding the neighbourhood area to include areas that the restaurant owners felt had been excluded, though the Forum acknowledges in its letter that this is a potentially complicated process and legal advice would be sought as to how it could best be implemented.
- 6.23. All of these changes would have to happen after the adoption of the neighbourhood plan that was voted on in the referendum – there is no provision in the legislation to make further amendments between the referendum and the decision to adopt or not. However, there is provision in the legislation to make amendments to neighbourhood plans once they have been adopted, and in instances where these modifications do not change the nature of the plan they can be made relatively quickly and possibly without the need for either further examination or another referendum. The exact process would need to be determined when the proposed changes are submitted to the Council. There are also statutory processes in place for designating and altering neighbourhood areas and neighbourhood forums.

- 6.24. On this basis, officers are of the opinion that the Forum's proposed response to the concerns of the Brick Lane Restaurant Association could plausibly be implemented.
- 6.25. As noted above, the Forum are of the opinion that the concerns of the Truman Estate are unreasonable and cannot be accommodated. Their full reasoning behind this can be seen in Appendix 5, and their concerns are summarised below. The Forum claim that:
- The Truman Estate are against any further controls or restrictions over how they develop their site.
  - A representative of the Truman Estate (Mr Zeloof) has been a member of the managing committee of the Forum since 2016, has had the opportunity to input throughout the neighbourhood plan development process, and twice voted in favour of the neighbourhood plan at annual general meetings of the Forum before now turning to oppose the plan.
  - The Truman Estate believe the plan is too conservation-oriented, but the Forum believe this focus on conservation has been justified through their consultations with local people, who have emphasised the importance of conservation in the area.

## **7. FACTORS TO BE CONSIDERED IN DECIDING WHETHER TO ADOPT OR REJECT THE SPITALFIELDS NEIGHBOURHOOD PLAN**

- 7.1. This section sets out factors to consider in deciding the proposal to make the Spitalfields Neighbourhood Plan, covering,
- Compliance with procedural requirements
  - Evaluation of referendum result and outcomes
  - Impacts of policy on stakeholders
  - Post referendum engagement

### **Procedural requirements**

- 7.2. Given that the plan has fulfilled all the procedural requirements and been found by an independent examiner to meet the basic conditions and legal requirements of neighbourhood plans, there is no objection to its adoption from a planning policy perspective. The question at hand is entirely one of how to interpret the democratic signals sent out by the conflicting referendums.

### **Referendum outcomes**

- 7.3. The residential vote had a higher overall number of voters than the business referendum. However, the turnout compared to the total electorate was low – not exceptionally low for a neighbourhood planning referendum held in isolation, but still quite low. The result of the residential referendum was fairly close, with a 54%/46% split in favour of the plan. In the context of neighbourhood planning referendums, this is a very low 'yes' vote, although if

the residential referendum had been the only vote to take place this would still require the Council to adopt the neighbourhood plan.

- 7.4. The business vote had a lower overall number of voters, but a high turnout compared to the number of registered voters. However, this high turnout is potentially misleading – businesses in the area had to actively register to vote by filling in and returning two forms to the Council (whereas most residential voters will already have been on the electoral roll, and very few will have needed to register to vote specifically to take part in this referendum). Having gone to the trouble of registering, businesses voters would then be more likely to actually cast their vote. A total of 812 businesses were invited to register, and if compared against that number, the percentage of businesses in the area that actually voted is 10.8%.
- 7.5. Members may be tempted to combine the votes cast in the two referendums to determine a ‘total’ vote count, and use this to determine their decision – this would lead to a result of ‘no’, by 6 votes. However, it should be noted that if a person lives in the neighbourhood area and also runs an eligible business within the neighbourhood area, that person is entitled to vote in both referendums. To combine the votes of the two referendums together could be seen as double-counting the votes of anyone who was able to vote in both referendums. But it could also be argued that people who are residents and business owners have a double stake in the area, and the neighbourhood planning legislation makes provision for their voices to be heard twice in those separate capacities through the two referendums.
- 7.6. It could be argued that the Forum have not done enough work to bring the business community along with them in the development of the plan, and this is reflected by the result of the business referendum. It is worth noting that the Forum’s own consultation statement claims that they only received 3 consultation responses from businesses during the first consultation. This could suggest a lack of engagement with the business community from the Forum, or a lack of interest from the business community, or a combination of both. However, in the second round of consultation, 16 responses from local businesses were received, and with the exception of a response from the Truman Brewery, these were entirely positive about the plan. This suggests that at least some elements of the business community in Spitalfields were engaged in the production and promotion of the plan.

### **Policy impacts**

- 7.7. We can also analyse the potential effects of the neighbourhood plan on the business community. The plan is split into three broad topics – urban heritage, open space and environment, and commercial mix.
- 7.8. The commercial mix policies appear the most relevant to businesses in the area. This section contains a single policy, SPITAL7, which builds on an existing policy in the Tower Hamlets Local Plan. The Local Plan policy requires major commercial or mixed-use developments to provide 10% of their employment floorspace at a 10% discount on market rents for a minimum of

10 years. The neighbourhood plan policy requires the discount to be increased to 45% and the time limit to be increased to a minimum of 12 years (with the proportion of space remaining the same at 10%). The supporting text in the neighbourhood plan states that this is in response to “testimonials from existing businesses and stakeholders in the area [which] revealed the overwhelming concern was rising rents pricing small businesses out of the area. As a whole this was considered to be having a detrimental effect on the Spitalfields area, making it more generic. This was cited by all types of businesses, including retailers and restaurateurs”. This is also the level of discount that was secured by planning officers in the Development Management team on the recently permitted Woodseer Street development. It is difficult to see how this policy could be considered to have a negative impact on the wider business community of Spitalfields, as its aim is to create a situation in which some spaces continue to exist with low enough rent that they can be utilised by smaller, independent businesses of the kind that the area is known for, and which might otherwise find it increasingly difficult to be located in Spitalfields due to high rents. The policy would have an impact on property developers, but should be largely beneficial for small businesses in the area.

7.9. To briefly examine the potential impacts of the other policies in the plan:

- SPITAL1 – Protecting the Physical Fabric of Spitalfields. This policy deepens existing heritage protections in the area, and develops a more granular understanding of the character of different parts of the neighbourhood area. While heritage protections can add cost and delay to developments, almost all of the neighbourhood area is within various conservation areas, so the level of heritage concern is already high and the need to deal with it should already be ‘priced in’ to any development proposals.
- SPITAL2 – Land Use, Activities and Frontages. This policy requires shopfront proposals to demonstrate a high quality of design; and requires consolidation of shopfronts to respect the rhythm of the street, which might discourage consolidation of multiple units into single, larger units. This could add some costs or restrictions to businesses in the area.
- SPITAL3 – Public Realm. This policy relates to maintaining and restoring the street pattern of the area and creating areas of positive public realm. This would likely only apply to larger redevelopment proposals.
- SPITAL4 – Facilitating Urban Greening. This policy requires new development to contribute to urban greening. However, it would only apply to residential development and class B1 uses (this specific use class has since been rescinded by the government, but would include offices, research and development, and light industry). It would not apply to majority of small businesses in the area.
- SPITAL5 – Local Green Space. This policy provides extra protection to five green spaces in the area. This does not affect businesses.

- SPITAL6 – Ram and Magpie Site. This policy encourages a space next to Spitalfields City Farm to be used for purposes relating to the farm. This does not affect businesses.

7.10. In summary, the open space and environment policies are not applicable to businesses in the area; while some elements of the heritage policies would potentially be applicable (depending on what proposals come forward and in which locations) and could add additional cost and delay to securing planning permissions – but this should be considered within the context of Spitalfields, where there are already significant heritage protections that need to be overcome. Any additional cost and delay caused by the neighbourhood plan would therefore be minimal, as applicants would already be dealing with heritage issues as part of their applications. There is therefore a potential argument that, although the plan appeared to be unpopular with local businesses at the time the referendums were held, it will ultimately not have a large impact on them; and that the positive residential vote should therefore be privileged, as the plan will have a greater impact on residential amenity through the protection of heritage and open spaces.

### **Post referendum engagement**

7.11. Finally, Councillors should take into account the Forum's discussions with representatives of the business community in the aftermath of the referendums. The Council asked the Forum to engage with business representatives to assess their reasons for opposing the neighbourhood plan and whether their objections could be overcome. The Forum met with representatives of the Truman Estate and the Brick Lane Restaurant Association. They concluded that the concerns of the restaurant owners could be addressed through a number of modifications, including some additional text within the plan itself; a change of the name of the plan to the Spitalfields and Banglatown Neighbourhood Plan; and an extension of the neighbourhood area. However, the Forum also stated that they believe the concerns of the Truman Estate are unreasonable and no changes can be made that would accommodate them.

### **Conclusion**

- 7.12. The Spitalfields Neighbourhood Plan is considered to meet the legal requirements and basic conditions of a neighbourhood plan, and to be sound from a planning policy perspective.
- 7.13. However, the two referendums that were held on the neighbourhood plan reached an inconclusive result, with the residential referendum voting in favour of the plan, and the business referendum voting against.
- 7.14. This report sets out the details of these referendums and considers the relative size of the electorate, the turnout, and the margin of victory in each case, as well as the potential impact of the neighbourhood plan on businesses within the area.

- 7.15. While planning officers are well-placed to provide recommendations on matters that purely relate to planning, it is not the role of officers to provide recommendations on an issue which speaks to a question of democratic legitimacy instead.
- 7.16. The recommendation in this report is therefore that Councillors take a vote on whether to adopt the neighbourhood plan or not, taking into consideration the factors set out in this report.

## **8. EQUALITIES IMPLICATIONS**

- 8.1. Officers used the Council's Equality Impact Assessment Screening tool to consider impacts on people with the protected characteristics outlined in the Equalities Act 2010 as part of the IMD of 9 August 2021 which agreed to send the neighbourhood plan to referendum. This concluded that the implementation of the neighbourhood plan would not have any adverse effects on people who share the protected characteristics. There have been no material changes since that time to suggest a different outcome following the referendums, and no further action is required. The screening exercise has been attached as Appendix 6 to this report.
- 8.2. It has been discussed in section 6 of the report that policies in the neighbourhood plan may have some financial impacts in terms of providing a larger discount on affordable workspace; or some costs and delay to planning applications in terms of dealing with the increased level of heritage protection in the neighbourhood plan. However, these impacts are not expected to be placed disproportionately on any particular protected group, but apply across the board within the neighbourhood plan area.

## **9. OTHER STATUTORY IMPLICATIONS**

- 9.1. This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
- 9.2. Consultations: See section 6 of this report for detail of the consultations that have been undertaken on the neighbourhood plan.
- 9.3. 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 for examination, and

concluded that a full SEA or HRA was not required. This decision was published by the Council in October 2020.

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

- 10.1. This report is seeking a decision on whether or not to adopt the Spitalfields Neighbourhood Plan following the results of the referenda. There will be no material financial implications from adopting the plan.
- 10.2. Any costs associated with the referendum process and adoption of the plan have been met from within existing revenue budget provision.
- 10.3. There is no Parish Council in place for the Spitalfields area. As a result, the updated CIL regulations 2010 allow the Council to retain any CIL income collected from this area but it must reinvest 25% of this income back into the local community. Should the neighbourhood plan be adopted then this will need to be considered when allocating CIL funding.

## **11. COMMENTS OF LEGAL SERVICES**

- 11.1. Section 38A(2) of the Planning and Compulsory Purchase Act 2004('the 2004 Act') defines a 'neighbourhood development plan' as a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan. Section 38A(3) of the 2004 Act also states that Schedule 4B of the Town and Country Planning Act 1990 ('TCPA 1990') also applies to neighbourhood development plans.
- 11.2. The Spitalfields Neighbourhood Plan was submitted to the Council, consulted on, and independently examined in line with the provisions in Schedule 4B of the Town and Country Planning Act 1990, and the Neighbourhood Planning (General) Regulations 2012(as amended).
- 11.3. 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.
- 11.4. Under s38(5) of the 2004 Act, the Council may (but need not) make a neighbourhood development plan if there are two applicable referendums and in one of those referendums (but not the other) more than half of those voting have voted in favour of the plan.
- 11.5. 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.



- 11.6. Pursuant to sections 38A(9) and (10) of the PCPA 2004 and regulation 19 of the Neighbourhood Planning (General) Regulations 2012, following a decision to make a neighbourhood plan, the local planning authority must publish (and send to the qualifying body and any other parties who asked to be informed of the decision) a decision statement setting out the reasons for the decision.
- 11.7. If the referendum supports the making of a neighbourhood plan, and following the formal adoption of such plan, the neighbourhood area can benefit from the allocation of 25% of CIL receipts relating to planning permissions granted in the area. The council will hold these funds but will consult with local people on how best to spend the money which could include supporting infrastructure development and addressing any other demands that development places on the area
- 11.8. In terms of any implications of the proposed recommendations arising from the Equality Act 2010 paragraphs 7.1 of this report states that the Council has subjected the recommendations in this report to an Equalities Impact Assessment Screening exercise. It concludes that the proposals in this report do not have any adverse effects on people who share Protected Characteristics as defined in the Equality Act 2010 and no further action is required. The abovementioned screening assessment therefore demonstrates that the Council has complied with and discharged the Public Sector Equality Duty in s149 of the Equality Act 2010.
- 11.9. Paragraph 6.2 of this report sets out the extent of the consultation exercises undertaken and demonstrates a fair and legally robust process.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

- Appendix 1: Spitalfields Neighbourhood Plan
- Appendix 2: Map of Spitalfields Neighbourhood Planning Area
- Appendix 3: Spitalfields Neighbourhood Plan Consultation Statement
- Appendix 4: Spitalfields Neighbourhood Plan Examiner's Final Report
- Appendix 5: Post-referendum correspondence between the Council and the Forum
- Appendix 6: Equalities Impact Assessment Screening

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

- NONE

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

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