

## **Roman Road Bow Neighbourhood Plan**

I have been asked to look at the proposed (re)designation of the neighbourhood forum previously involved in the Roman Road Neighbourhood Plan designation following MAB in late March 2023.

Various queries were raised revolving around –

- Level of consultation undertaken
- Membership of the Forum

## **Make-Up of Forum**

This matter is considered in two parts. First, the statutory legislative requirements governing the make-up of any forum in the country and, second, the Applicant/Forum's own constitutional obligations.

### **a) Legislation**

The requirements to form a neighbourhood forum are set out in s61F(5) of the Town and Country Planning Act 1990 (as amended) ("TCPA"). This section is set out below. 2 of these requirements directly impact on the make-up of the Forum.

The first is that membership of the forum is

- "open" to all over 16 who live/work in the area; or
- are business operators in the area; or
- are local members of LBTH.

The second is that it must have a membership of at least 21 such persons.

### **b) Constitution**

A minimum of 21 members is required to make-up a neighbourhood forum. The precise make-up of the Applicant/Forum is detailed in its Constitution -

<http://romanroadbowneighbourhoodplan.org/wp-content/uploads/2017/05/RRBNF-constitution-20170515.pdf>

Specifically, at paragraph 6, the Constitution notes in respect of *general membership* of the Applicant/Forum –

- Membership is open to "*all people over the age of 16 who meet any one of the following criteria*"
- a) "*all who live or work in the neighbourhood area*"
- b) "*all business operators*"
- c) "*all constituted voluntary, community and statutory groups*"
- d) "*elected LBTH members*" representing wards in the neighbourhood area.

Looking directly at the make-up of the Applicant/Forum Committee, again in paragraph 6, the Constitution states that this committee “shall be drawn from different geographical places in the neighbourhood area and different sections of the community”

The purpose of the Applicant/Forum is set out below, reflecting the diversity of the neighbourhood area -

### *3.PURPOSE and OBJECTIVES*

*The purpose of the Forum is to promote and improve the social, economic and environmental and well-being of its residents and businesses. We will do this by creating a cohesive community built around a flourishing high street and by specifically:*

- a) **Supporting** our local businesses and traders.*
- b) **Improving** our public realm, green and open spaces, and underused space.*
- c) **Increasing** community capacity infrastructure.*
- d) **Working** towards a safer and cleaner neighbourhood.*
- e) **Improving** connectivity and accessibility of movement into and around the area.*
- f) **Ensuring** development supports and enriches our community and high street.*
- g) **Protecting** the area’s heritage and celebrating our diverse identities and cultures.*

### c) Advice

It is for the Applicant/Forum to be satisfied in the first instance that it is properly constituted in accordance first with any statutory requirements and second with their own governance arrangements. Once it is so satisfied, it may apply to LBTH as the local planning authority for designation as a neighbourhood forum.

LBTH’s responsibility is to designate a relevant body as a neighbourhood forum if it is satisfied that the conditions set out in s61F(5) are met. This is a discretionary power.

Coupled with the wording of the Forum’s Constitution, the legal requirements are met. Membership eligibility of the Forum is wide – see paragraph 6 of the Constitution. There is no bar imposed because of age; gender; ethnicity; disability and so on.

### Consultation

This may be split into constituent parts.

#### a) Length of Consultation Period

Consultation on the application to be (re)designated as a neighbour forum was conducted over the period 17 November 2022 to 12 January 2023, an 8-week period which took in Christmas.

Legislation requires that the consultation period should be “not less than 6 weeks from the date on which the application is first publicised” – Reg 9(d) of The Neighbourhood Planning (General) Regulations 2012.

### Advice

The length of the consultation undertaken meets the required criteria in that it exceeds the minimum statutory requirements.

### b) Means of consultation

Consultation was undertaken by using the local press and LBTH website. There was no consultation using libraries or contacting businesses/residents directly.

Reg 9 of The Neighbourhood Planning (General) Regulations 2012 states *“a local planning authority must .... on their website and in such other manner as they consider is likely to bring the application to the attention of people who live, work or carry on business in the area”*

LBTH has adopted planning guidance documents which advises that the *“Council will undertake statutory public consultation for a six week period. Consultation will be carried out in line with the national legislation and guidance.”* –

[https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Strategic-Planning/Neighbourhood-Planning/NHBD\\_Planning\\_Guidance\\_Note\\_Stage\\_1\\_0418.2.pdf](https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Strategic-Planning/Neighbourhood-Planning/NHBD_Planning_Guidance_Note_Stage_1_0418.2.pdf)

### Advice

The means of consultation meets the required criteria. It was carried out in the proper manner in accordance with the statutory requirements and our own published consultation procedure for designating neighbourhood forums.

### c) Low response rate to the consultation

Seven responses have been received. One explicitly supports the application. The others do not object.

### Advice

This is consultation, not a plebiscite. If people choose not to reply, then that is their choice. In many ways it is not too dissimilar to a planning application where there are no public responses to an application, a decision still has to be made.

A decision is still required whether to redesignate (or not) the Neighbourhood Forum. Legislation (see “d) Failure to determine the application on time following consultation” below) states that LBTH *“must”* determine the application by a particular date.

The low response rate, whilst disappointing, cannot be used as a reason to not determine the application.

Neither can it be used as a reason to refuse the application – see “Potential Reasons for Refusal” below. The application may only be refused in accordance with s65F TCPA and low consultation response does not feature as a reason for refusal.

#### d) Failure to determine the application on time following consultation

The legal requirement (Reg 9A of The Neighbourhood Planning (General) Regulations 2012, as amended by The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016) is that applications for designation as a neighbour forum must be determined by *“the date which is the last day of the period of 13 weeks beginning with the day immediately following that on which the application is first publicised in accordance with regulation 9.”*

In other words, there is a 13-week period from publishing the application. This 13-week window has now passed, and no decision has been made.

#### Advice

Legislation does not say what should happen or what rights an applicant has if the application is not determined in time. This is unlike, for example, an application for planning permission whereby the applicant for planning permission may appeal to the Secretary of State against the non-determination of a planning application by the local planning authority.

Similarly, legislation does not say that a failure to determine the application for designation means that it lapses and falls by the wayside.

The applicant has the right to apply to the courts for an order requiring LBTH to make a decision. But given the time, expense and likely delay this may involve, an applicant in this situation may be better advised to put pressure on LBTH to reach a decision.

Pragmatically speaking, the advice is that LBTH should make a decision. If that decision is to refuse the application, the applicant would have to be given reasons and would have the right to seek a review of the decision in the Planning Court. Both the reasons for the refusal and the delay in reaching a decision would be vulnerable to a challenge.

If the application is granted by LBTH and the Forum is designated, the risk of a challenge from any other 3<sup>rd</sup> party in this instance would appear to be minimal given the low number of replies to the consultation and the fact that no objection has been received.

The risk is further marginalised as there does not appear to be a “rival” bid for designation which may otherwise look to challenge any decision.

#### **Potential Reasons for Refusal**

The decision whether or to designate is discretionary – use of the word “may” in s61F(5) TCPA.

Any reason for refusal must be in accordance with s61F(5) TCPA.

S61F(5) TCPA reads – *“A local planning authority may designate an organisation or body as a neighbourhood forum if the authority are satisfied that it meets the following conditions—*

*(a) it is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area),*

*(b) its membership is open to—*

*(i) individuals who live in the neighbourhood area concerned,*

*(ii) individuals who work there (whether for businesses carried on there or otherwise), and*

*(iii) individuals who are elected members of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,*

*(c) its membership includes a minimum of 21 individuals each of whom—*

*(i) lives in the neighbourhood area concerned,*

*(ii) works there (whether for a business carried on there or otherwise), or*

*(iii) is an elected member of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,*

*(d) it has a written constitution, and*

*(e) such other conditions as may be prescribed.”*

No “such other conditions” as contained in s61F(5)(e) have yet been introduced by the Secretary of State.

Reading the legislation, the implication is that an application may only be refused if it fails to meet any of the tests set out in s61F(e).

Guidance is given in s61F(7) TCPA ) on how to approach s65F(5) – “A local planning authority—

*(a) must, in determining under subsection (5) whether to designate an organisation or body as a neighbourhood forum for a neighbourhood area, have regard to the desirability of designating an organisation or body—*

*(i) which has secured (or taken reasonable steps to attempt to secure) that its membership includes at least one individual falling within each of sub-paragraphs (i) to (iii) of subsection (5)(b),*

*(ii) whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area, and*

*(iii) whose purpose reflects (in general terms) the character of that area”*

This section of the legislation guides the decision-maker to look at

- *desirability of designation* – it would on the face of it be difficult to say that designation was not desirable. There has been a forum in place for the last 5 years; the plan was adopted by LBTH in November 2022 so it cannot be said that such a forum has no use; the out-going forum clearly is of a view there is desirability (otherwise, why bother applying for redesignation)

Desirability of designation will be more appropriate for applicants which

- secure or have taken reasonable steps to secure members who live or work in the neighbourhood or are elected members of LBTH ward in the neighbourhood – note that these are “low bar” tests and even in the event of non-compliance, all that need be taken are reasonable steps. Looking at the Forum’s website and its Constitution, it would be difficult to justify refusal on these grounds

- draw members from different places in the neighbourhood and different communities in that area – note that the only requirement is for “different” places and communities. It is not a requirement for *all* communities and places. Again, looking at the Forum’s website and Constitution, it is not a “closed” shop and it is up to individual residents whether or not they wish to get involved with it
- have purposes reflecting the character of that area – again, a simple read of the website shows this to be the case.

Given the fact that this is an application by the existing Forum to be redesignated, the question “what has changed” in the last few years to make the previously “acceptable” and designated Forum now undesirable?

If refused, the applicant must be given reasons and the decision may be vulnerable to challenge in the courts.

### **Potential Consequences**

Any decision reached by LBTH whether to designate the Applicant as a neighbourhood forum or not is subject to two legal tests, both of which may be open to challenge.

The first test is whether the decision is correct in law (see above).

The second is that any decision reached by a local authority must be a reasonable, and not an irrational, decision assessed on the Wednesbury principle. The classical formulation of an irrational decision is a decision that “is so unreasonable that no reasonable authority could ever have come to it.”

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