



Mayor and Cabinet

Lee Neighbourhood Plan, recommendations by independent examiner and permission to proceed to referendum.

Date: 06/12/2023

Key decision: Yes

Class: Part 1

Ward(s) affected: Blackheath and Lee wards

Contributors: Head of Strategic Planning

Outline and recommendations

This report outlines the process of the independent examination of the Lee Neighbourhood Plan and the modifications proposed.

It is recommended that Mayor and Cabinet

Accept the modifications made to the policy text as outlined in the examiner's report and approve the examiners recommendation that the plan once modified should proceed to a public referendum.

Timeline of engagement and decision-making

13th January 2016 – Lee Neighbourhood Forum and Area formally designated

21st June 2021 – Re-designation of Lee forum approved for a further 5-year period

19th January 2022 – Lee Neighbourhood Plan Regulation 15 submitted to Council

11th March – 6th May 2022 – Regulation 16 public consultation held

September 2023 to November 2023 – Independent Examination held

17th November 2023– Final examiners report submitted to Council

1. Summary

- 1.1. Lee Neighbourhood forum (the forum) are a community organisation based in the Blackheath and Lee wards of the London Borough of Lewisham who have been formally designated as the qualifying body for the purposes of Neighbourhood Planning.
- 1.2. The Forum was formally designated by Mayor and Cabinet for a 5 year period on 13th January 2016 in accordance with;
 - section 61F(5) of the Town and Country Planning Act 1990 as applied to section 38A of the Planning and Compulsory Purchase Act 2004,
 - Localism Act (2011)
 - Neighbourhood Planning Regulations (2012) “the Regs”
- 1.3. The Lee Neighbourhood Area was formally designated by LB Lewisham via Mayor and Cabinet on 13th January 2016. The Forum acts as the qualifying body for the purposes of Neighbourhood Planning that fall within the designated area.
- 1.4. The forum also draws membership from the Royal Borough of Greenwich due to the designated Neighbourhood Area, occupies parts of both LB Lewisham and RB Greenwich.
- 1.5. As the 5 year designation of the forum lapsed on 13th January 2021, the group subsequently re-applied for forum status and was formally re-designated in accordance with the statutory requirements highlighted in 1.2. Due to the Council’s updated constitution regarding Neighbourhood Planning matters, the approval for the re-designation was made through an executive decision made by Emma Talbot, Director of Planning, on the 21st June 2021. The re-designation will last for a period of 5 years.
- 1.6. In September 2023 Lewisham council appointed Derek Stebbing BA (Hons) DipEP MRTPI as the independent examiner for the Lee Neighbourhood Development Plan with the agreement of the Forum.

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- 1.7. The independent examiner's report outlining his recommendations was submitted to the Council on 17th November 2023. Council officers along with the Forum have agreed to accept the modifications and recommendations to the Lee Neighbourhood Development Plan made in the examiner's report.

2. Recommendations

- 2.1. It is recommended that Mayor and Cabinet:
- Accept the modifications made to the policy text outlined in the examiner's report and approve the examiners recommendation that the plan once modified should proceed to a public referendum.

3. Policy Context

National Planning Policy Framework (NPPF)

- 3.1. The National Planning Policy Framework (NPPF) (2023) outlines the role of neighbourhood planning and its context within the plan making framework. The NPPF states that:
- Paragraph 29 - Neighbourhood Planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.
 - Paragraph 30 – Once a neighborhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently

Legislative Framework

- 3.2. The Forum were designated by the Council as the qualifying body to lead the neighbourhood planning process, including the drafting of a neighbourhood development plan as set out in 61F(5) of the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by section 38A of the Planning and Compulsory Purchase Act
- 3.3. The neighbourhood development plan is required to be consistent with national, regional and local planning policy and to meet basic conditions while drafting policies that relate to the development and use of land within a designated neighbourhood area.
- 3.4. The basic conditions that are required to be met by law are set out in the Town and Country Planning Act 1990, Sch 4B, para 8(2), as applied to Neighbourhood Plans by S38A of the Planning and Compulsory Purchase Act 2004:
- 3.5. In addition to the above the neighbourhood development plan also needs to meet the following regulations:
- Article 8 of the European Convention on Human Rights
 - Environmental Assessments of Plans and Programmes Regulations 2004

Corporate Priorities

- 3.6. The Councils Corporate Strategy (2022 – 2026) outlines the Council's vision to deliver for residents over the next four years. Building on Lewisham's historic values of

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fairness, equality and putting the community at the heart of everything it does, the Council will create deliverable policies underpinned by a desire to promote vibrant communities, champion local diversity and promote social, economic and environmental sustainability.

3.7. Neighbourhood planning contributes to the following corporate priorities:

- Open Lewisham – The Lee Neighbourhood Plan recognises and celebrates diversity supporting the priorities of making Lewisham a welcoming place of safety for all.
- Cleaner and Greener – The Lee Neighbourhood Plan aims to protect and improve the quality and access to existing open spaces as well as promoting new open space. The plan also aims to address and offset the climate emergency
- A strong local economy – The Lee Neighbourhood Plan encourages investment through the revitalisation of the Lee Green district area and promotes the safeguarding of small business and local employment space.
- Quality housing – The Lee Neighbourhood Plan encourages the provision of safe, comfortable accommodation that they can be proud of and happy living in.

4. Background

4.1. The Plan was submitted to the Council(s) by the Forum for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 on the 19th January 2022. The suite of documents submitted are listed as:

- The Lee Neighbourhood Plan 2021-2031
- The Lee Neighbourhood Plan Basic Conditions
- The Lee Neighbourhood Plan Consultation statement
- The Lee Neighbourhood Plan Strategic Environmental Assessment (SEA)

4.2. An initial assessment of the plan was undertaken by Council officers. This assessment determined that the plan met the appropriate requirements as set out in section 3 of this report and could be progressed to the next stage.

4.3. The Council carried out publicity in relation to the plan proposal in accordance with Regulation 16 including a public consultation which ran for an 8 week period from 11th March 2022 to 6th May 2022. The Council received a total of 15 representations from members of the public and statutory consultees. All responses made during the Regulation 16 public consultation have been made available for inspection on the Council website.

4.4. Derek Stebbing BA (Hons) DipEP MRTPI known as the “examiner” was appointed as the independent examiner by the Council in agreement with the Forum in September 2023

4.5. The examination period ran from September 2023 until November 2023 with the examiner’s report being formally submitted to the Council on 17th November 2023 Throughout the independent examination stage officers updated the Forum on the progression of the examination as well as the expected date for the publication of the examiner’s report and decision notice outlining the Council’s decision

5. Examiners report

5.1. The Examiner’s report independently scrutinises the process of drafting a

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neighbourhood development plan from forum and area designation to examination. The examiner also scrutinises whether the plan meets the basic conditions and can therefore be recommended to proceed to a public referendum.

- 5.2. The examiner is required to make one of the following recommendations based on the examination of the plan:
 - The Plan can proceed to a Referendum
 - The Plan with the recommended modifications can proceed to Referendum
 - The Plan does not meet the legal requirements and cannot proceed to Referendum
- 5.3. The examiner is also required to recommend whether the referendum area should be different from the Plan Area defined by the designation of the Lee Neighbourhood Area approved by Mayor and Cabinet, 13th January 2016
- 5.4. The examiner's intention when examining the plan must focus on its compliance with the basic conditions. The examiner is permitted to modify the policy text in order to achieve this.
- 5.5. The examiner may also modify policy text or delete a policy or parts of its text if the policy has elements which either seeks to enforce controls that fall outside of the scope of neighbourhood planning or introduce requirements which are indiscriminate in terms of the size of development or are overly onerous and would not meet the Basic Conditions.
- 5.6. In the examiner's report it states that although modifications may be made, the examiner has a duty to ensure, where possible, that the intention and spirit of the plan is retained so that the plan, when modified still reflects the communities intent in producing their neighbourhood plan.
- 5.7. All modifications to policy text made by the examiner as a result of the examination can be found in the examiners report (appendix1) and table 1 of the decision notice.

6. Recommendations and conclusions made by the examiner

- 6.1. The key recommendations and conclusions made by the examiner as set out in the examiner's report are:
 - *From my examination of the Lee Neighbourhood Development Plan (the Plan) and its supporting documentation including the representations made, I have concluded that subject to the modifications set out in this report, the Plan meets the Basic Conditions*
 - *The Plan has been prepared and submitted for examination by a qualifying body – the Lee Neighbourhood Forum (the Forum/LNF);*
 - *The Plan has been prepared for an area properly designated – the Lee Neighbourhood Area, as identified on the map at page 15 of the Plan;*
 - *The Plan specifies the period to which it is to take effect – from 2021 to 2031; and,*
 - *The policies relate to the development and use of land for a designated neighbourhood plan area.*
 - *I recommend that the Plan, once modified, proceeds to referendum on the basis that it has met all the relevant legal requirements. I have*

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considered whether the referendum area should extend beyond the designated area to which the Plan relates and have concluded that it should not.

- 6.2. Detailed modifications to the Lee Neighbourhood Plan as recommended by the examiner can be found in appendix 1 of the examiners report.

7. Conclusions

- 7.1. The Lee Neighbourhood Plan was prepared in accordance with the statutory requirements and processes set out in the Town and Country Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012 (as amended)
- 7.2. Subject to the recommended modifications made by the examiner during the Regulation 17 examination, the plan would contribute to achieving sustainable development, have regard to national policy and guidance and generally conforms to the strategic policies of Lewisham Local Development Framework and the London Plan 2021 therefore meeting the basic conditions.
- 7.3. Council officers and the Forum have accepted the modifications to the plan recommended by the examiner as they meet the basic conditions and legal implications and are not deemed to have changed the intention or spirit of the plan and still reflect the communities' intent.

8. Financial implications

- 8.1. The Council has a statutory duty to support the preparation of neighbourhood plans through the neighbourhood plan making process. As part of this statutory function the Council is responsible for facilitating a public referendum. The Council receives £20k Government funding to cover the costs of advertising and facilitating a referendum on the plan once it has been prepared.
- 8.2. The Council's Electoral Services team has provided an estimated cost of up to £30k for undertaking a referendum.
- 8.3. The additional costs of the referendum will be covered from existing Strategic Planning budgets. No further Council funding is required to meet the recommendations of this report.

9. Legal implications

- 9.1. The Neighbourhood Planning (General) Regulations 2012 (the 2012 Regulations) the [Schedule 4B](#) to the Town and Country Planning Act 1990 ([TCPA 1990](#)) and the Neighbourhood Planning (Referendums) Regulations 2012 ("the referendum regulations"), set out the procedure for the independent examination and referendum for Neighbourhood Development Plans
- 9.2. The 2012 Regulations requires that the Council as the Local Planning Authority ("the LPA") reach their decision whether to follow the Examiner's recommendations within five weeks (from the date the LPA receives the examiner's report), unless:
- the LPA proposes to make a decision which differs from that recommended by the examiner, or
 - an LPA and a neighbourhood group agree that more time than the

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proposed five-week period will be required to reach a decision

- 9.3. In this case officer's are proposing to follow the recommendation of the Inspector to modify the plan and that the plan, once modified, proceeds to referendum. Therefore the decision needs to be taken by the 22nd December 2023.
- 9.4. As soon as possible after making the decision the LPA must publish the decision and their reasons for it, ("the decision statement"), details of where and when the decision statement may be inspected and the report made by the examiner on their website and in such other manner as they consider is likely to bring the decision statement and the report to the attention of people who live, work or carry on business in the Neighbourhood area
- 9.5. The LPA can progress a Neighbourhood Plan to a referendum if it is satisfied that the draft NDP meets the basic conditions mentioned in the TCPA 1990 and as set out in detail in the Inspector's report at paragraphs 1.12 and 1.13. It also needs to be compatible with the Human Rights Convention .
- 9.6. The Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR 2004) require an LPA to assess the potential environmental effects of a particular plan before its adoption. EAPPR 2004, reg 12(2) requires an authority to prepare an environmental report which identifies, describes and evaluates not only the likely significant effects on the environment of implementing the plan, but also any reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme
- 9.7. The 2012 Regulations in the present circumstances require that a referendum on a proposal for an NDP must be held within 84 days from the day after an LPA publishes its decision that a referendum must be held. However the referendum regulations provide that this requirement does not apply where:
 - the LPA and the qualifying body agree that the referendum need not be held by this date
 - the poll at the referendum is taken on the same day as another poll in accordance with regulation 11 of the 2012 Regulations (whether or not the polls are taken together), provided that day is no later than the date 65 days from the day after an LPA publishes its decision that a referendum must be held, or
 - proceedings for questioning the decision that the referendum must be held have been brought in accordance with TCPA 1990, s 61N(2)
- 9.8. The referendum regulations prescribes the question to be asked in the referendum and a simple majority of votes (over 50% of those voting) in favor of the NDP is sufficient for it to succeed. If the vote is in favor of the NDP it must be made within eight weeks of the date of the referendum, unless there are unresolved legal challenges to the decision either to hold the referendum or in relation to the conduct of the referendum.
- 9.9. The LPA adopts the NDP as part of the development plan. If there is any conflict between the NDP and the local plan, the NDP takes precedence
- 9.10. The Equality Act 2010 (the Act) introduced the public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, Page 413 religion or belief, sex and sexual orientation.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

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- advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 9.11. The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor and Cabinet, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which the Council can demonstrate that they have had ‘due regard’.
- 9.12. The Equality and Human Rights Commission issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with services and public functions. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 9.13. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty
- 9.14. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties, and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice.
- 9.15. It is also important to note that the Council is subject to the Human Rights Act, and should therefore, also consider the potential impact their particular decisions could have on human rights. Some of these rights are unconditional, others may be limited in finite and well defined circumstances and others are qualified and must be balanced against the need of the wider community, such as the right to a private and family life. Where there are human rights implications associated with the proposals in this report regard must be had to them before making any decision. The examiner in his report at paragraph 5.2 concluded that he was satisfied that the NDP subject to modification meets the basic conditions on EU obligations.

10. Equalities implications

- 10.1. The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a public sector equality duty which covers the following nine protected characteristics: age; disability; gender

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reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

10.2. The Council must in the exercise of its functions, have regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

10.3. The Council's Single Equality Framework 2020-2024 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.

10.4. The Public Sector Equality Duty is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.

11. Climate change and environmental implications

11.1. There are no direct climate change and environmental implications of this report

12. Crime and disorder implications

12.1. There are no direct crime and disorder implications of this report

13. Health and wellbeing implications

13.1. There are no direct health and wellbeing implications of this report

14. Background papers/ Appendices

Appendix 1 Examiners Report (17th November 2023)

Appendix 2 Decision Statement

Appendix 3 The Lee Neighbourhood Plan (Regulation 16 version)

Appendix 4 Lee Neighbourhood Plan Statement of Common Ground

Appendix 5 Equalities Assessment

Appendix 6 Strategic Environmental Assessment (2022)

Appendix 7 Habitats Regulations Assessment Screening Report (2019)

15. Report author(s) and contact

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16. Comments for and on behalf of the Executive Director for Corporate Resources

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17. Comments for and on behalf of the Director of Law, Governance and HR

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