



Mayor and Cabinet

Proposed temporary changes to the Statement of Community Involvement during Covi19 Pandemic

Date: 10 June 2020

Key decision: Yes

Class: Part 1

Ward(s) affected: All

Contributors: ED Housing, Regeneration and Environment (Christopher Dale)

Outline and recommendations

The current unprecedented public health emergency means there is a need to review and adapt existing processes in relation to Local Meetings and Planning Committee Meetings which are set out in the Council's Statement of Community Involvement (SCI). The recommended changes will enable the Council to continue to fulfil its statutory duty to determine the full range of planning applications, including applications relating to critical major regeneration or housing schemes. It is recommended that:

- *The Mayor and Cabinet authorise temporary modifications to the Council's Statement of Community Involvement (SCI) which will be reviewed after a 3 month period following introduction.*

Timeline of engagement and decision-making

The Current Statement of Community Involvement was adopted in July 2006.

1. Summary

- 1.1. The Council is under a statutory duty to determine planning applications submitted to it. It is important that during these exceptional times that the Council is able to continue to determine the full range of planning applications in order to fulfil its statutory duty and to ensure that major regeneration schemes and proposals involving the delivery of much needed affordable housing are not held up.
- 1.2. There is therefore a need to review existing processes to enable virtual planning committee meetings to take place and to enable an alternative format for Local Meetings to be developed through the use of information technology.
- 1.3. Planning decisions are matters of planning judgment, and planning applications are determined either by the Planning Committee or they may be delegated to officers. Planning Committee meetings happen in public where the officer's report to the Committee is discussed, representations are heard, and are important for ensuring democratic and public accountability of decision making. Where officers take decisions, a report is prepared explaining the decision.
- 1.4. Planning committee meetings are resource intensive. A wide range of planning matters go before Planning Committee. For example, some cases which go to Committee are straightforward applications of plan policies and others are complex matters of planning judgment. Some cases are of major public importance to the whole borough, some are of significance to more than just a local area, and some cases which are taken to committee for decision are of limited public interest. This range is caused partly because of the low level of 3 objections resulting in a committee referral. The current public health situation has resulted in a reduced capacity within the Planning service. This could be addressed by enabling more straightforward applications to be decided by officers for a temporary period, providing appropriate safeguards are built in.
- 1.5. In order to enable these changes to happen it is necessary for the Council's Statement of Community Involvement (SCI) to be amended. The proposed changes to the SCI will enable the Council to deal with the growing backlog of planning applications currently requiring referral to planning committee. Crucially, the proposed changes to the SCI will mean that decisions can be made on planning applications relating to critical major regeneration and housing schemes. However, it is proposed that any changes should

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be reviewed after a period of three months.

2. Recommendations

2.1. It is recommended that The Mayor and Cabinet authorise temporary modifications to the Council's Statement of Community Involvement (SCI) to enable the following:

- Threshold for applications being required to go to Planning Committee for decision to be raised from 3 to 5
- Any application with an amenity society objection to be subject to case review with Chair to determine whether it is referred to planning committee for a decision
- Any application with 5-9 objections to be subject to case review with Chair to determine whether it is referred to planning committee for a decision
- Invitations to planning committee meetings and other communications and information (including publication of agendas) relating to planning committee meetings be carried out electronically wherever possible
- Make it explicit that people wishing to speak at planning committee meetings will need to register to speak in advance of the meeting and will need to submit written copies of their speeches in advance of the meeting
- A new online format for Local Meetings to be developed and implemented
- Make any necessary amendments regarding the publication of agendas and decisions
- Above changes to working practices to be reviewed after a 3 month period following introduction.

3. Policy Context

3.1. The content of this report is consistent with the Council's policy framework, particularly the Core Strategy and the Sustainable Community Strategy (2008-2020) (SCS). The SCI is a legal planning document that sets out how the Council will consult the public and other stakeholders when preparing statutory development plan documents and how it will consult on planning applications. The Council must (as a minimum) comply with statutory requirements for consultation set out in relevant legislation, including:

- The Town & Country Planning (Development Management Procedure) (England) Order 2015 – for planning applications
- The Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended) – for listed building consents

4. Background

4.1. The Council adopted its current Statement of Community Involvement (SCI) in July 2006. The SCI forms part of the Local Development Framework and is a legal planning requirement. It sets out the Council's policy for involving and communicating with interested parties in matters relating to the preparation and revision of local development framework documents and the exercise of the authority's functions in relation to planning applications. In particular, it sets out the circumstances in which decisions on planning applications will be made by planning committee (rather than officers) in line with the Council's Constitution. It also outlines the processes through which interested parties will be notified of the committee meeting and sets out how they can make verbal representations at the meeting. The SCI also makes provision for additional community engagement by way of a Local Meeting where 10 or more objections have been received to a planning application.

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- 4.2. Recommendations to the Local Democracy Working Group made in February 2020 included a recommendation that a new Statement of Community Involvement is adopted and a review of committee referral triggers are also implemented.
- 4.3. Previously, Council meetings only happened “in person”. The Government has passed new legislation to enable Councils to meet remotely.
- 4.4. The current COVID-19 pandemic means that in the interests of public safety and given the need to ensure social distancing, it is not reasonably practicable to hold in-person meetings in public. This position is likely to persist for some time. The Council is under a statutory duty to determine planning applications submitted to it. It is vitally important that the Council is able to continue to determine the full range of planning applications in order to fulfil its statutory duty and to ensure that major regeneration schemes and proposals involving the delivery of much needed affordable housing are not held up. The ability of the Council to process critical major housing or regeneration planning decisions is one of the indicators which there is currently a requirement to report on weekly.
- 4.5. Most decisions on planning applications are delegated to officers. However the SCI currently states that, unless senior planning officers intend to refuse planning permission under delegation, a decision on a planning application will be made by a Council Planning Committee in the following circumstances:
- where there are three or more individual and separate written valid planning objections received from different residents
 - where there is one or more objection(s) from a recognised residents’ association or community/amenity group
 - where the application is for development which is not in accordance with the approved development plan policies or other approved planning policies
 - where, in the opinion of the Council’s Head of Planning, the matter would be more appropriately dealt with by the relevant committee.

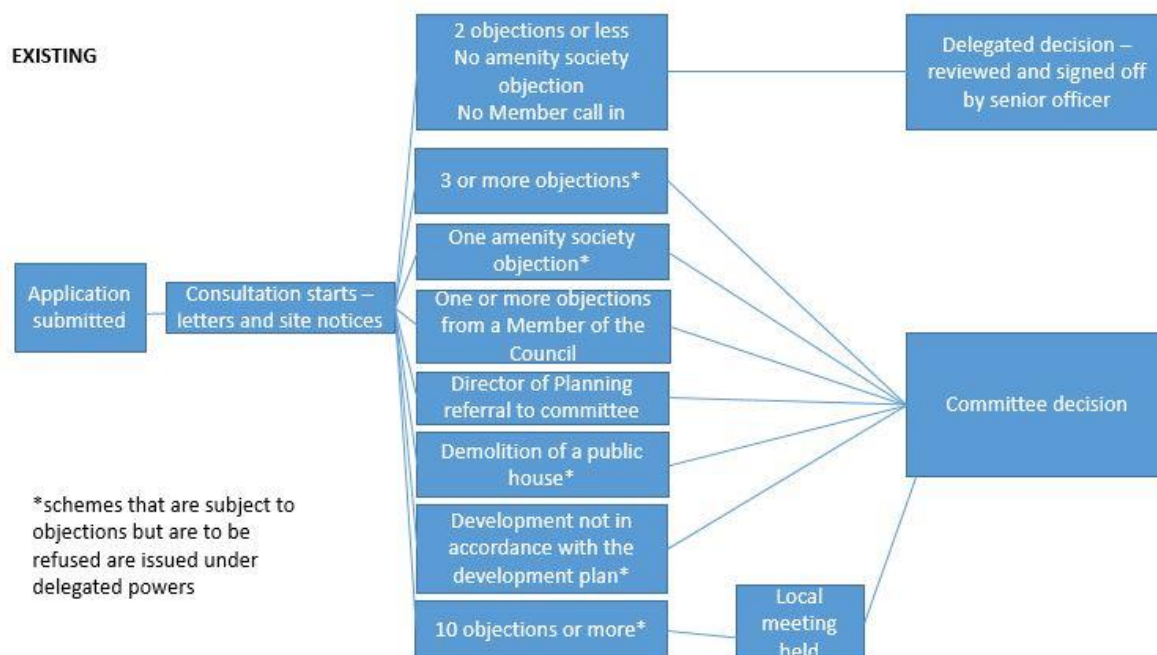
These thresholds for referring applications to a planning committee for determination are in line with the Council Scheme of Delegation set out in the Constitution. Diagram 1 illustrates the current process as set out in the Constitution.

Diagram 1 – Existing processes as set out in the SCI

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4.6. The SCI sets out that the following will occur when a planning application is to be decided by a Council Planning Committee:

- The agenda will be available in all libraries, at the Planning Information Office and on the Lewisham website five days prior to the meeting. A specific Committee report can be sent out on request.
- All those who have made a written representation (not statutory authorities) will be invited (by letter) to the meeting.
- The applicant for planning permission (or a representative) will be permitted to speak to the Planning Committee for five minutes.
- A representative of those who have made written representations will be permitted to speak to the Planning Committee for five minutes. A full list of those who have made written representations will be made available on request so that they can get together to coordinate a single presentation to the Committee.

4.7. The SCI also states that a local meeting will be offered to those that have made representations and the applicant at least two weeks prior to a decision being made on a planning application in the following circumstances:

- where one or more objection(s) have been received from a residents' association, community/amenity group or ward Councillor and/or
- where a petition is received containing more than 25 signatures and/or
- where 10 or more individual written objections are received from different residents.

(See Diagram 1)

5. Proposed changes to the SCI

5.1. Since it has not been possible to hold planning committee meetings since March a backlog of around 40 planning applications requiring determination by committee has built up and continues to grow. The Government has brought in legislation to enable decision making to take place through virtual committee meetings and the Council has put in place measures to hold virtual planning committee meetings.

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- 5.2. Taking planning applications to a planning committee for a decision is resource intensive. The current unprecedented situation has reduced the capacity of the Planning Department due to staff working from home with childcare responsibilities and staff volunteering to help out with frontline services to assist vulnerable groups in the community. Practice runs of virtual committee meetings have demonstrated that these are likely to take longer than physical meetings. Due to the temporary postponement of planning committee meetings a backlog of applications requiring determination by planning committee has arisen. There are currently around 40 cases awaiting determination by planning committee.
- 5.3. Planning guidance published on 13 May by the Ministry of Housing, Communities and Local Government (MHCLG) includes guidance on virtual planning committees and notes that “To ensure planning decisions continue to be made, local planning authorities should take advantage of powers to hold virtual planning committees – rather than deferring committee dates. They should also consider using ‘urgency powers’ within their constitutions to give senior officers delegated authority to make decisions.”
- 5.4. Lewisham currently has comparatively low thresholds for referral of items to committee meaning that proposals with very localised interest such as household extensions are frequently referred to planning committee. It is proposed to increase the threshold for referral of applications to planning committee from 3 to 5 objections. However an added safeguard will be introduced in the form of a case review with the committee chair when there has been an amenity society objection to agree whether a case should, still be referred to Committee. Applications which are recommended for refusal by officers would continue to be determined under delegated authority unless called in by a Councillor.
- 5.5. Officers considered a higher level than 5, such as 7 or 10. Key reasons for selecting 5 included that officers considered that a higher level was likely to be overly high for the current public health emergency and overly increase social contact as people would seek additional support from neighbours. Whilst Officers considered that a figure in the range of 5-10 was acceptable, on balance, as a matter of judgment, officers considered that increasing the level from 3 to 5 was considered proportionate in all the circumstances. However, it is proposed that cases which have a threshold of between 5 and 9 objections, would be subject to a case review with the committee chair.
- 5.6. In order to ensure virtual committee meetings are conducted in an orderly fashion it will be necessary to introduce a new requirement for public speakers (including applicants and/or their agents) to register their intention to speak 24 hours in advance of the meeting so that the IT department can arrange for them to be invited to the meeting. It will also be necessary for public speakers to submit their intended verbal statements in advance of the meeting as a precaution to ensure that their views can still be taken into account by the Planning Committee in the event that their verbal presentation is cut short due to technical difficulties.
- 5.7. The SCI makes provision for Local Meetings where 10 or more objections have been received to a planning application. These meetings are an opportunity for the community to find out more about proposals which may affect them and to ask officers and applicants questions about the planning application. As it is no longer possible to hold public meetings it is proposed that a new electronic format for Local Meetings will be developed which fulfils the same important role of community engagement.
- 5.8. There is evidence that the current situation has resulted in some delays to postal deliveries so it is proposed that, wherever possible, notification of Local Meetings (in their revised electronic format) and Planning Committee Meetings be made by email. Where an individual's or group's email address has not been given, the Council will

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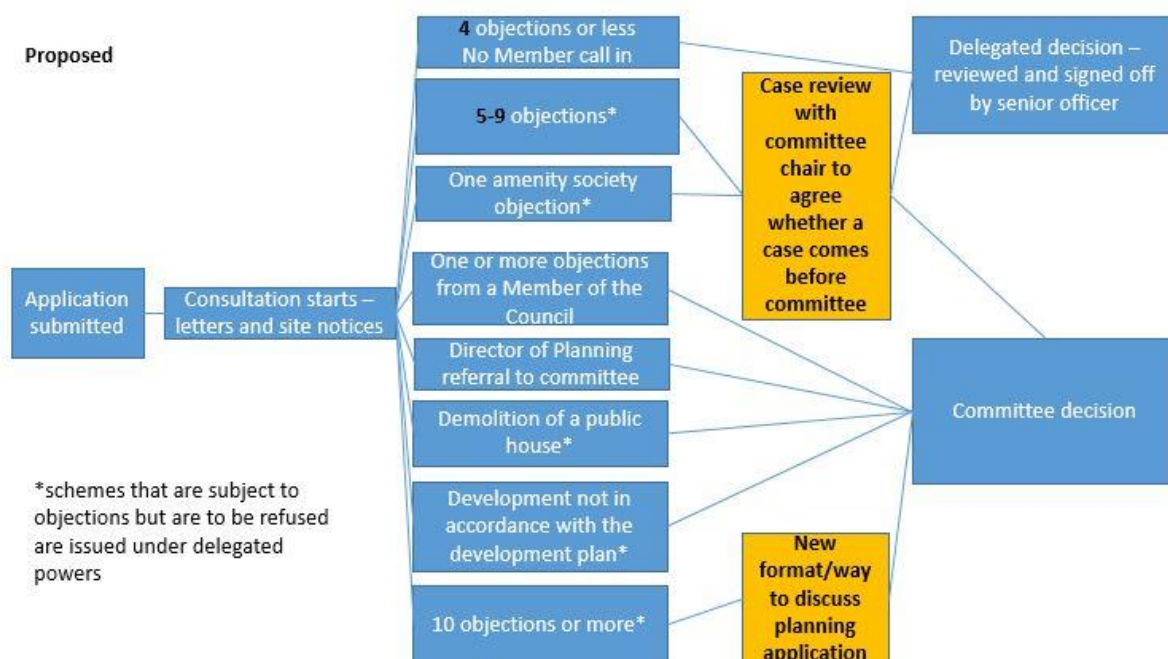
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continue to communicate with them via post.

- 5.9. At this time, libraries are closed, as is the Planning Information office. The SCI notes that these locations are available to view planning applications, committee agendas and decisions. As these locations are not currently available, it is proposed to update the SCI to make it clear how the public can access this information such as via the Council website.
- 5.10. In summary, it is recommended that the Mayor and Cabinet authorise temporary modifications to the Council's Statement of Community Involvement (SCI) to enable the following:
- Threshold for applications being required to go to Planning Committee for decision to be raised from 3 to 5
 - Any application with an amenity society objection to be subject to case review with Chair to determine whether it is referred to planning committee for a decision
 - Any application with 5-9 objections to be subject to case review with Chair to determine whether it is referred to planning committee for a decision
 - Invitations to planning committee meetings and other communications and information (including publication of agendas) relating to planning committee meetings be carried out electronically wherever possible
 - Make it explicit that people wishing to speak at planning committee meetings will need to register to speak in advance of the meeting and will need to submit written copies of their speeches in advance of the meeting
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Diagram 2 – Proposed processes following amendments to SCI



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6. Financial implications

- 6.1. There are no significant financial implications. As public meetings would be hosted online rather than physically there may be a small saving on venue hire expenditure.

7. Legal implications

- 7.1. The Equality Act 2010 (the Act) introduced a new 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, religion or belief, sex and sexual orientation.
- 7.2. In summary, the council must, in the exercise of its function, have due 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 persons who do not share it
- 7.3. The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, 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.
- 7.4. The Equality and Human Rights Commission has 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 the equality duty. 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:
- <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>
- 7.5. The legal implications of amending the SCI to be effective immediately have also been taken into account. It is lawful to take decisions on the basis of the new SCI if approved by the Mayor and Cabinet. It is recognised that residents or others may have made representations on the current applications in the backlog on the basis of the framework in the current SCI. For example, this may have impacted how many people choose to write in to the Council. The legitimate expectation that decisions will be taken in accordance with the published SCI and its procedures is important. However, public authorities also have in principle a right to alter their policies or to depart from them in a particular case. Amenity societies have been informed of the proposed changes and been given an opportunity to make representations. A notice has also been published on the Council’s website. Any comments received will be reported verbally. The circumstances of the public health emergency are pressing and unique and justify changing the policy in the proportionate manner proposed, for a temporary period, with a review proposed. Further, case-by-case judgment is always applied in a planning

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decision and officers may recommend taking a particular application to committee if they consider it appropriate, including on the basis of a change in the SCI between consultation stage and officer report stage.

8. Equalities implications

- 8.1. There are equalities implications. Key implications that officers recognise include that holding virtual meetings may risk excluding some people for a variety of reasons, including for example those who do not frequently use or have ready access to electronic media or do not have reliable access to the internet by way of broadband or sufficient data allowances, and that people with protected characteristics for example such as age may be more impacted than others. Officers also recognise that holding virtual meetings may make it easier for some others with protected characteristics to “attend” virtually. These impacts have been taken into account. We will aim to reduce some of the possible impacts of virtual hearings (and advance equality) by requiring speakers to provide what they wish to say in advance, so that if there is a technological issue their representations will still be taken into account, and we will be recording all meetings and the recording can be made available later to those who wish to view at a later time.

9. Climate change and environmental implications

- 9.1. There are no climate change or environmental implications. T

10. Crime and disorder implications

- 10.1. There are no crime and disorder implications.

11. Health and wellbeing implications

- 11.1. There are no health and wellbeing implications.

12. Background papers

- 12.1. Lewisham Statement of Community Involvement

<https://lewisham.gov.uk/my services/planning/policy/ldf/statement-of-community-involvement>

13. Glossary

Term	Definition
Statement of Community Involvement (SCI)	The SCI forms part of the Local Development Framework and is a legal planning requirement. It sets out the Council's policy for involving and communicating with interested parties in matters relating to the preparation and revision of local development framework documents and the exercise of the authority's functions in relation to planning applications.

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Term	Definition
Local Development Framework	The name for the collection of Local Development Documents. It consists of Development Plan Documents, Supplementary Planning Documents, a Statement of Community Involvement, the Local Development Scheme and the Annual Monitoring Report. Together, these documents provide the planning framework for the borough as developed at the local level.

14. Report author and contact

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