



## Mayor and Cabinet

### **Proposed temporary changes to the Statement of Community Involvement during Covid19 Pandemic Addendum Report**

**Date:** 10<sup>th</sup> June 2020

**Key decision:** Yes

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Christopher Dale

## **1. Summary**

### **1. Introduction**

- 1.1 This report has been prepared to provide an update following the publication of the report for proposed temporary changes to the Statement of Community Involvement, and covers the responses received as a result of the notification to Amenity Societies in the borough and the statement published on the website. Officers have reviewed the submissions. Some of these relate to changes to the Council's scheme of delegation which was considered and approved by Strategic Planning Committee on 9 June 2020. Officers acknowledge the concerns raised and consider that the time-limited proposals being made have the appropriate safeguards built in to ensure continued transparency and democratic accountability in decision making. For the avoidance of doubt, it is proposed that the three month temporary period will expire on 16<sup>th</sup> September 2020.

### **2. Comments received on the Proposed Temporary changes to the Statement of Community Involvement**

## 2.1 Brockley Society

- 2.1.1 Brockley Society is concerned that any Temporary changes to the Scheme of Delegation decided must be temporary. We understand that they will be reviewed after three months after which we hope for a return to the previous arrangements, including the return of physical Planning Committee Meetings as soon as is safe.
- 2.1.2 In the case of an Amenity Society objection or 5-9 objectors to an application, we need to be able to reliably mandate our Ward Councillors as our representatives at a case review with the committee chair or at virtual committee meetings, should that take place.
- 2.1.3 This presupposes that we get to see agenda reports in advance with adequate time to make written comments, etc.
- 2.1.4 If Officers are able to deal with a greater number of applications under delegated authority, any revisions as may be agreed as part of negotiation processes must be referred back to respondents in good time for comment.
- 2.1.5 Getting back to reliable reporting of Public Notices for Planning Applications would start the ball rolling with good intent - the last logged report published on the LBL Planning Website was for 25 September 2019

## 2.2 Deptford Society

- 2.2.1 Under the proposed changes, an objection by a councillor would still result in an application being referred to committee, but an objection by an amenity society would only require a case review by the committee chair in the first instance. Ten or more objections from the general public would be needed for an application to be taken to committee. Considering that amenity societies generally represent many more than ten members, we question the fact that the weight of their objection is being played down so severely.
- 2.2.2 Amenity societies, with their strong and direct links to local community groups, residents and businesses, are often relied upon by council officers and councillors to act as their 'eyes and ears' across the borough. We believe this role is increasingly important during this time of restriction on movements and contact, and would like to see it reflected in the council's consideration of these matters.
- 2.2.3 The council states that the changes will be reviewed after three months. We would like to know what criteria will be used to measure whether the changes have been successful or not, and on what basis a decision will be made on whether to continue them.

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- 2.2.4 We would also like to know what steps the council intends to take to ensure that these changes to procedure do not result in the digitally-disadvantaged members of our community being excluded from the consultation process.
- 2.2.5 We appreciate the opportunity to comment on the proposals and would ask that the above concerns be tabled at the forthcoming meeting.

## 2.3 Telegraph Hill Society

- 2.3.1 We appreciate the need for short term amendments to the process give the current difficulties of operating. The process must however, remain transparent, provide for adequate chance for objection and observe the rules of natural justice.

### *Length of force of Temporary Measures*

- 2.3.2 We are concerned that there is a proposed review in 2.1.1 only after 3 months. We believe that the review should take place at the earlier of 3 months or when restrictions on public meetings under the Coronavirus Act 2020 are reduced, whichever is the earlier.

### *Case Review*

- 2.3.3 We are unclear as to how the case review will occur and whether it will only comprise the chair of the relevant planning sub-committee and the case officer. In our view any such case review should include at least one further member of the sub-committee and/or a local councillor (who will have knowledge of the area concerned). There need to be written guidance for the case review otherwise there is a risk that reviews of different, but similar, applications will lead to different decisions as to referral and, potentially, to legal challenge. We would further recommend that the reasons for the decision (as to whether to go to delegated powers or to committee) be published on the planning portal.

### *Review of Officers Recommendations*

- 2.3.4 At present, with public meetings, we are able to see the officer's recommendations and reasoning before we make our objections at the meeting. A process whereby we are able to challenge the officer's recommendations must be left in place.
- 2.3.5 We would therefore strongly urge that should the Chair of the planning sub-committee decide that, after the proposed case review (under paragraph 2.1.1), a delegation to an officer is appropriate:
- (a) the officer' should prepare a draft analysis and recommendation in a similar way as they would if the matters was to go to committee
  - (b) the draft analysis and recommendation should be circulated to the applicant and objectors for written representations (equivalent to the 5 minutes oral representations currently allowed)

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(c) those representations should be taken into account when the final decision is made.

- 2.3.6 We believe that such a process must be included to ensure that the officer's analysis and recommendation is subject to adequate review. Whilst such analysis is generally good, inevitably there are instances where it is wrong or omits salient facts which are brought to the committee's attention during the oral presentations. The procedure for challenging the officer's analysis and recommendation is therefore vitally necessary and will ensure that legal challenges to decisions are avoided.

#### *Self-Review Threats*

- 2.3.7 A fundamental tenet of good decision making is the avoidance self-review threats. Given the increased ability of an officer under these new delegated powers to make decisions, we believe that the planning officer who considers the application and makes the decision should NOT have been involved in any pre-application enquiries or given any pre-application advice to the applicant.
- 2.3.8 The current process is biased in favour of the applicant in that objectors do not have a similar opportunity to challenge a proposal in its pre-application stage (although we appreciate that this is planning law and not in the hands of the Council to change). It must be recognised however that, no matter how great the integrity of any planning officer is, it must always be true that they will find it hard to be objective on a case where they have already given advice. Even if they are, indeed, objective, the appearance is one of lack of true independence. With the temporary absence of public meetings to challenge a decision therefore, it is important, for natural justice, that the public can trust the system. The system in place must not therefore allow the suggestion that independence could be compromised by self-review.

#### *Amendments to Planning Applications*

- 2.3.9 At present where a case is to be referred to a planning sub-committee, there is often discussion between the case officer and the objectors to see if the objections can be met by changes to the application. In other instances, where the application still goes to committee we have found that last minute changes have been made by the applicant of which we are unaware. Council process at present requires the local amenity society to be informed of the original application but not of amendments to that application. If more delegated decisions are going to be made, it is critical that amenity societies are informed of any amendments in good time and allowed to comment upon them since they will have no opportunity (unlike at present) to comment on them in public meeting.

### **2.4 Blackheath Society**

- 2.4.1 We would like to draw your attention to the code of best practice developed by the London Forum of Amenity Societies, attached, which itemises some common concerns of amenity societies to be addressed in developing these new procedures.

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- 2.4.2 In the spirit of Lewisham's Democracy Review, we would like to propose that these are circulated and covered in the committee discussion.

In particular, we would like to:

- 1) Query the apparent lack of opportunity for members of the public to contribute to (as opposed to observe) online meetings. Please could you clarify what the options will be.
- 2) Query the initial consultation step: the diagrams outlining the new process imply that the first step – consultation by letters and site notices – is unchanged. Please can you confirm that this is the case.
- 3) Suggest a much more detailed agenda document outlining the procedures and modus operandi, including participation and observing, be used, offering clear guidance. We are attaching a document used by Greenwich which we find helpful.

## 2.5 Culverley Green Residents Association

- 2.5.1 Whilst we understand that these changes are temporary and that normal services will be reviewed in three months, something we all hope for, we remain concerned as do other societies.
- 2.5.2 We are concerned that local resident's objections may well be ignored despite the fact that as an Resident Association we may submit an objection on behalf of the local community. It is not clear that these objections will be taken into account.
- 2.5.3 How will the democratic right to be heard be exercised in these cases? Surely it is the legal requirement for due weight to be given to any objection submitted, particularly by Residents Associations who represent the local population.
- 2.5.4 When officers make a decision using their delegated powers how can we be sure they are in possession of the full facts of the case especially if they are not familiar with the area and a site visit may not taken place.

## 2.6 Sydenham Society

- 2.6.1 The Sydenham Society is aware of the difficulties facing the Council at the moment. We are of the view, however, that the proposed changes to the scheme of delegation should have been subject to a full consultation process rather than amenity societies merely being notified about them.
- 2.6.2 We have seen the representations made by the Telegraph Hill, Brockley, Blackheath and Deptford Societies, together with the Culverley Green Residents Association, and agree with the points made. In addition we wish to ask:
- That it be made clear that these are emergency measures only.
  - They must be subject to a sunset clause. Any temporary (emergency) measures automatically expire in a maximum of three months time. They must be for a prescribed period - such as the UK Government uses for its temporary measures. If Planning wishes to extend the measures at the

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expiration of the three months, then the Council must hold a proper and timely consultation and debate before doing so and any extension must not be for longer than an additional three months.

- That these measures not be backdated. If the goalposts are moved for applications where the public consultation period has already closed, then we believe they could be open to a legal challenge.
- That Planning Case Officers ensure that all planning application documents meet the Lewisham Local Information Requirements standard prior to being validated. Where they do not, then they should be returned to the applicant and not validated. There have been cases where documents are being validated that do not meet the requirements as set out in the document: *Lewisham Local Information Requirements 2016*.
- That officers are to ensure that site notices are posted in a timely manner – ie officers to put up the notices themselves and not rely on applicants to do so.
- Where a minimum of two amenity societies object to an application, then that application must go automatically before a Planning Committee.
- We agree with Brockley Society's comment that: *"In the case of an amenity society objection or 5-9 objectors to an application, we need to be able to reliably mandate our Ward Councillors as our representatives at a case review with the committee chair or at virtual committee meetings, should that take place."* In those cases we should be able to rely on a relevant Ward Councillor (and/or Lewisham's Heritage Champion if relevant) to formally request a full Planning Committee hearing.
- That where a Planning Committee Chair is making a decision as to what goes before his/her Committee that he/she reads in full all the comments that have been submitted - not just the Officer's report.
- That Case Officers must act in accordance with the considered guidelines and grounds for objection that have been drawn up in more considered times.

## 2.7 Ladywell Society

- 2.7.1 I would like to add the concern of the Ladywell Society to the proposed changes to the consultation process, and support the many reasoned comments from our colleagues in the other amenity societies.
- 2.7.2 Of particular concern is that these changes will not be temporary but will be retained in the forthcoming Statement of Community Involvement, which is being discussed at this week's Mayor and Cabinet. The current SCI dates from 2006, although some consultation took place in 2018, for a revised document. You may remember that amenity groups attended consultation meetings in the Civic Suite and made constructive suggestions on how the document could be improved. It is regrettable that officers were unable to proceed with the new SCI at the time.
- 2.7.3 I hope that the comments you have received from amenity groups on this will be passed to the Mayor and Cabinet officers for inclusion in that discussion.

## 2.8 Lee Forum

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- 2.8.1 I write to express concern about the recommended changes to Lewisham Council's adopted Scheme of Delegation (SoD) and Statement of Community Involvement (SCI) on behalf of Lee Forum Committee.
- 2.8.2 We understand that there is a backlog of 40 applications and the council's document states the reason for this is that "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".
- 2.8.3 The council's paper also gives a solution though, saying "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".
- 2.8.4 We would hope it would now be possible to deal with the backlog through these virtual meetings, as some other councils are doing; prioritising those decisions with upcoming deadlines; without needing to make the recommended changes which dilute local democracy.
- 2.8.5 If the proposals are however deemed necessary and adopted by the council we would ask that it is made clear in the decision document

1. How the community may participate in virtual meetings to the same extent as they would have done in physical meetings

2. That these are temporary measures.

3. How the community is to be involved in the decision in three months' time as to what to do next. The council's recommendation is that the Strategic Planning Committee should make the decision at that time. The effect of this would be that the community's voice in local planning is now to be diluted after one week of consultation, and it will then be excluded from the decisions as to when, whether or how to reinstate it's voice to previous levels.

- 2.8.6 We know and appreciate the pressures the council is under at this time, with some planning staff members presumably seconded to other departments to work on the pandemic. However we ask the council to proceed with caution and make use of safeguards since these proposals could lead to erosion of local democracy and effects on the local landscape that have effects long after the pandemic has passed.

## 2.9 Deptford People Project

- 2.9.1 West Greenwich Deptford and Evelyn Ward Lewisham Deptford residents are currently experiencing extreme levels of hardship. This was the case prior to Covid19 and I can only assume, until I have access to statistics that this will have been exasperated by the pandemic.
- 2.9.2 Now as resident and a local community organiser I have some serious concerns. Concerns regarding local resident's ability to be fully consulted on planning. Planning that directly effects their lives.

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- 2.9.3 Many local residents do not have digital access. Many do not have the ability to use online services and provisions. A great number of residents that are linked directly to the convoys site.
- 2.9.4 The Proposed Temporary changes to the Scheme of Delegation would disproportionately effect the rights of low income families, those with disabilities and our local BAME community.
- 2.9.5 We have no public library services. No community services where help and support can be accessed. The proposed changes completely cut the local community out of the local planning process. This is hugely discriminatory.
- 2.9.6 I understand that we are dealing with exceptional circumstances. However if planning applications are to be pushed through without the acknowledgment and support of local people. I can only assume that this will cause a huge black lash not only against the council but also the developers.
- 2.9.7 If the process is to be changed and those changes disproportionately effect the poorest and those from the BAME community the changes will be openly discriminatory.
- 2.9.8 Social distancing and self-isolation also means that local people are less likely to see on site posted planning notifications.
- 2.9.9 We need a tangible and practical way of ensuring local people and those at a disadvantage are actively encouraged to be visible. Visible and represented within local redevelopment initiatives. This will avoid later campaigns and protests.
- 2.9.10 In light of this issue. We are suggesting that the council and planning department factor in a suitable solution or service to address this issue.
- 2.9.11 Our suggestion is a local area hub. A small temporary space where social distancing can be achieved. This would provide access to planning information and digital provisions allowing local people the tools and support needed to be involved in the local planning process. This would also include local outreach.
- 2.9.12 We as a community are happy to voluntarily run and coordinate any such provision. Perhaps with regards to Convoys this element could be added to the cultural strategy and funded by the developer as part of their public consultation requirements.
- 2.9.13 Local people are not against the development of convoys. We need change, social housing and a new local focus. Especially after the Covid crisis.
- 2.9.14 But local people do need to feel included. Actual residents, not self-appointed funded organisations such as Voice for Deptford. Who in reality represent no person that actually lives on the site.

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## 2.10 Other individual representations received

- 2.10.1 An important change in the democratic process that allows citizens to publically comment on changes in their physical and social environment is being made on the basis of a backlog of just 40 outstanding planning applications.
- 2.10.2 The threshold levels of member involvement has been established, I assume, for good reason. I imagine that the good reason was that some changes to the physical environment may be very 'local' in terms of how many people are affected but the effect of those changes could be massive on a very small number of citizens - this does not change because of the pandemic emergency at all.
- 2.10.3 Other organisations (including the House of Commons) are adapting to new ways of working that maintain the traditions of democracy through online meetings, public engagement and decision-making - perhaps these could be considered first.
- 2.10.4 It noted also that you are attempting to change planning law by increasing the number of objectors for planning applications in order that they may not be placed before elected members; thereby denying the community use of the democracy on which are members were elected. This must be resisted. It is an abuse of process.
- 2.10.5 Our concern now is that under the Covid-19 regime, many of these planning permissions may be waived through by officers - and without consultation with elected members.

## 2. Report author and contact

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