

Mayor & Cabinet		
Report Title	Response to Sustainable Development Select Committee on Neighbourhood Planning	
Key Decision	Yes	Item No.
Ward	All	
Contributors	Executive Director for Resources and Regeneration	
Class	Part 1	Date: 19 June 2013

1. Purpose

- 1.1 This report sets out the response from the Executive Director for Resources and Regeneration to the comments referred to the Mayor on the 10th April 2013 by the Sustainable Development Select Committee on neighbourhood planning.
- 1.2 On the 19 March 2013, the Sustainable Development Select Committee considered a report on neighbourhood planning. The Committee recommended that when dealing with community groups during the neighbourhood planning process, or determining applications to nominate assets of community value, Council officers should inform groups from the outset of the timescales and deadlines involved.

2. Recommendation

- 2.1 The Mayor is recommended to approve the response to the Sustainable Development Select committee on neighbourhood planning set out in this report including the preparation of a further report on the neighbourhood planning process.

4. Policy Context

- 4.1 Neighbourhood development plans once adopted are legal documents that must be considered when making decisions on planning applications. They are prepared by the local community but formally adopted after a successful referendum by the Council. Once adopted they become part of the development plan for the borough and as such are part of the Council's policy framework.
- 4.2 The Council's current policy framework includes all adopted development plans that form part of the Lewisham local development framework (LDF). The contents of this report are consistent with the Council's policy framework as in order to adopt a neighbourhood plan it must be in 'general conformity' with the

Council's Core Strategy which is the primary development plan document in the LDF.

- 4.3 This report supports the achievements of the Sustainable Community Strategy policy objective *Empowered and responsible* : where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities, and *Clean, green and liveable*: where people live in affordable, high quality and adaptable housing, have access to green spaces and take responsibility for their impact on the environment

5 Background

- 5.1 Neighbourhood planning is a new way for communities to decide the future of the places where they live. The government introduced the community right to undertake neighbourhood planning through the Localism Act 2011.
- 5.2 Neighbourhood Plans are led by local people who set out how they want their local area to develop. Neighbourhood planning is optional and not compulsory, local people set out the vision and planning policies for their own neighborhood. Neighborhood planning is intended to be about local issues rather than strategic planning issues. They must take account of national planning rules and be in 'general conformity' with the existing adopted planning framework for Lewisham. The governments aim is that they will promote sustainable development, they are not about attempts to stop development.
- 5.3 The Localism Act 2011 (part 6 chapter 3) sets out the local planning authorities responsibilities as:
- Agreeing and designating the area of the neighbourhood plan
 - Recognising/designating a neighbourhood forum
 - Providing advice and support to the neighbourhood forum in preparing the neighbourhood plan
 - Arranging and paying for an Independent Examination of the neighbourhood plan
 - Arranging and paying for a local referendum
- 5.4 The diagram below summarises the steps for a Neighbourhood Forum to take in preparing a Neighbourhood Plan and what the corresponding role of the local planning authority will be.

Neighbourhood Forum process for Neighbourhood Plan	Lewisham Council's Role
Step 1: process is started by Neighbourhood Forum	LBL must agree the application to establish the Forum and this includes agreeing the boundary of the area to be

	designated.
Step 2: draft plan is prepared	Duty to provide advice and assistance
Step 3: early community involvement	Validation of plan process and content
Step 4: Plan submitted to Council	Lewisham arrange and pay for independent examination
Step 5: Plan goes for a local referendum	Lewisham will arrange and fund the local referendum
Step 6: Plan adopted by Council	If more than 50% of those voting agree the plan the Council has a legal duty to adopt it as part of the Development Plan.

- 5.5 The Localism Act 2011 also introduces new powers for eligible local voluntary and community groups to ask the Council to list certain assets as being of value to the community. If an asset is listed and then comes up for sale, the new right will give an eligible community interest group that wishes to be treated as a potential bidder to purchase the asset 6 months to put together a bid to buy it. This right is intended to give communities an increased chance to save shops, pubs or other local facilities which are of community value.

6 Response to Sustainable Development Select Committee views

- 6.1 On the 19 March 2013, the Sustainable Development Select Committee considered a report on neighbourhood planning. The Committee recommended that when dealing with community groups during the neighbourhood planning process, or determining applications to nominate assets of community value, Council officers should inform groups from the outset of the timescales and deadlines involved.

Neighbourhood Planning

- 6.2 As set out above (paragraph 5.3) the Localism Act 2011 places a number of duties on the Council with regard to neighbourhood planning. The responsibilities of the council and the neighbourhood forum are further explained and detailed in The Neighbourhood Planning (General) Regulations 2012.
- 6.3 The Planning Service has adopted the approach of meeting with any group that express an interest in producing a neighbourhood plan to explain the process and discuss the planning issues they would like to address. In many cases the planning issues that concern local groups can be dealt with in

another more efficient way. For example, the Council is producing detailed policy guidance in the Development Management Local Plan (DMLP) and officers have met with community groups to see how neighbourhood issues can be addressed through the local plan. In some other cases a less formal planning solution might work, such as a supplementary planning document which involves a less onerous process for adoption. Yet other solutions might involve an informal urban design guidance for the local area or a project based approach to solving the problems identified. The Planning Service is flexible about the best solution to local planning issues.

- 6.4 The local groups that the planning service has met so far to discuss neighbourhood planning are:

The Forest Hill and Sydenham Society (exploring a joint NP)
The Blackheath Society (considering a cross borough NP with Greenwich)
The Ladywell Society together with Ladywell Village Group
The Grove Park Community Group
The Rushey Green Assembly
The Crofton Park Assembly
Bellingham Interagency Neighbourhood Management

- 6.5 At present no applications have been made to the council to be designated as a neighbourhood forum or to consider a neighbourhood plan. The planning service has opened a webpage in the planning policy website to provide information and advice to local groups thinking about forming a neighbourhood forum or preparing a neighbourhood plan. At present two advice notes are on the website and these will be added to as time goes by.

- 6.6 The Neighbourhood Planning Regulations 2012 set out the legal duties and process that must be followed for neighbourhood planning. The Mayor could instruct the Planning Service to set out in more detail what the tasks are, who will be responsible for undertaking them and who will make the decisions and when. It may prove helpful to local groups who want more detail on the process and who will be responsible for decisions.

- 6.7 At present all non executive decisions (save those reserved to Council) relating to neighbourhood planning, are delegated in the Lewisham Constitution to the Strategic Planning Committee. It is recommended that the planning service and legal service prepare a joint report to the Executive on the neighbourhood planning process, setting out both key stages and process for the Executive to approve.

7. Assets of community value

- 7.1 The process for nominating an asset of community value starts with a community group submitting their application to nominate an asset. The Lewisham website provides details on the process and an application form. When the Council is approached about how to apply, applicants are directed to the Council's website:

<http://www.lewisham.gov.uk/getinvolved/community-support/community-assets/Pages/default.aspx>

- 7.2 The application form gives details of how to apply, the information required, and the tests the Council will have to apply to the application to determine whether or not to agree to the nomination and list the nominated asset as an asset of community value. The application form also details the relevant timescales involved in the process.
- 7.3 The Local Authority is required to make its decision within 8 weeks of receiving a nomination. Following a decision being made, and if that decision is to list the asset, then the owner has 8 weeks in which to appeal against this decision. This appeal takes the form of a review of the decision, which must be completed within a further 8 weeks, unless the parties involved agree otherwise.

8 Legal implications

- 8.1 As of 6 April 2012 section 116 (and Schedule 9) of the Localism Act, which makes provision for neighbourhood development orders and neighbourhood development plans, came into force. This, and in relation to "neighbourhood development", meant that the Town and Country Planning Act of 1990 (the 1990 Act) was amended to include a new section 61E, 61F through to 61P dealing with the designation of the "neighbourhood area", "setting up a neighbourhood forum/community forum", "promoting a neighbourhood plan/neighbourhood development order" and the authorisation to act in relation to neighbourhood areas.

Neighbourhood forums are qualifying bodies that are designated to take forward neighbourhood planning in neighbourhood areas. Neighbourhood areas are areas designated as such by the LPA.

Neighbourhood forums can use neighbourhood planning powers to establish general planning policies for the development and use of land in a designated neighbourhood area. These are "neighbourhood development plans."

Neighbourhood planning can also have the power to grant permission for development they want without the need for a planning application. These orders are "neighbourhood development orders.'

The criteria for establishing neighbourhood forums are intended to encourage new and existing residents' organisations, voluntary and community groups to put themselves forward. A LPA may designate an organisation or body as a neighbourhood forum if the authority is satisfied that it meets the following criteria:

- 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 include the neighbourhood area concerned

- its membership is open to: individuals who live in the neighbourhood area concerned, individuals who work there, individuals who are elected members of a London borough whose area falls within the neighbourhood area concerned
- the membership includes a minimum of 21 individuals (made up as above), and it has a written constitution

The LPA may only designate **one** forum for each neighbourhood area. A designation ceases at the end of 5 years . A LPA may withdraw a designation if they consider that organisation or body no longer meets the conditions by reference to which it was designated.

Any neighbourhood plan or order formally adopted, before the designation ceases or if the designation is withdrawn by the LPA, will remain valid.

If a proposal is made by an organisation or body designated as a neighbourhood forum and the designation is withdrawn at any time before the proposal is submitted for independent examination the proposal is treated as withdrawn.

Local councils will continue to produce development plans that will set the strategic context within which neighbourhood development plans will sit.

Neighbourhood development plans or orders do not take effect unless there is a majority of support in a referendum of the neighbourhood. Neighbourhood development plans will need to meet a number of conditions before they can be put to a community referendum, for example the document must have regard to national planning policy, must be in conformity with the development plan (London Plan and Council's Planning Documents), and be compliant with EU obligations and human rights requirements.

- 8.2 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.

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.
- 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.

The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, 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.

The Equality and Human Rights Commission has recently 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: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

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

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. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

9 Financial Implications

- 9.1 In terms of the costs associated with this report, the planning service have a duty to support neighbourhood forum in preparing neighbourhood plans but the Act does not imply financial support. There would nevertheless be an impact on the planning service budget from staff time at the very least.
- 9.2 The Council has to bear the cost of any examination and of a referendum. The planning Inspectorate currently charge for examinations at approximately £1000 per day, it is difficult to estimate the amount of time needed for an examination of a neighborhood plan prior to seeing the content but as a rough guide £10K could be the cost associated with an examination. Referendum can be very expensive depending upon timing and the extent of the area covered by the referendum.

10 Equalities Implications

- 10.1 The Equality Act 2010 became law in October 2010. The Act aims to streamline all previous anti-discrimination laws within a Single Act. The new

public sector Equality Duty, which is part of the Equality Act 2010, came into effect on the 5 April 2011.

- 10.2 The Equality Duty has three aims. It requires public bodies (including local authorities) when making decisions to have due regard to the need to
- eliminate unlawful discrimination, harassment, victimisation and any conduct prohibited by the Equality Act 2010
 - advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
 - foster good relations between people who share a protected characteristic and people who do not share it.
- 10.3 The Council's Comprehensive Equality Scheme for 2012-16 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 Council will need to advise the Neighbourhood Forum if an Equalities Analysis Assessment (EAA) should be prepared as part of the preparation of the neighbourhood plan.
- 10.5 An EAA is the process of systematically analysing a proposed policy to identify what effect, or likely effect, will follow from the implementation of a policy for different groups in the community. By undertaking the EAA as part of the NP process it will ensure that equalities impacts have been fully taken into account in a systematic way and support good decision-making.
- 10.6 The Council has developed a toolkit to enable the development of Equalities Analysis Assessments. This can be made available to support Neighbourhood Forums with this process along with advice from officers who have experience of undertaking EAAs.

11 Environmental implications

- 11.1 There are no specific environmental implications arising from this report.

12. Conclusion

- 12.1 The Localism Act 2011 introduced a discretionary power for local communities to prepare neighbourhood plans. The Council has a duty to assist with the preparation and must make certain decisions on applications to be designated as neighbourhood forum. In addition certain decisions are needed on the area to be covered by the plan, the content of the plan and arrangements for Examination and referendum. This report sets out a proposal for the planning service and legal service to bring forward a report on the neighbourhood planning process and who will make the relevant decisions. The current details of how to apply to nominate an asset of community value are also explained in the report.

Background documents

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
<u>Neighbourhood Planning (General) Regulations</u>	2012	Laurence House	Planning Policy	Brian Regan	No
<u>Neighbourhood planning (Referendums) Regulations</u>	2012	Laurence House	Planning Policy	Brian Regan	No
<u>Localism Act</u>	2011	Laurence House	Planning Policy	Brian Regan	No

If you have any queries on this report, please contact Brian Regan, Planning Policy Manager, 3rd floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 8774.