



## Mayor and Cabinet

### **Statement of Community Involvement [ceasing temporary Covid changes to the scheme of delegation]**

**Date:** 10<sup>th</sup> March 2021

**Key decision:** Yes

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Emma Talbot

## Outline and recommendations

*The current unprecedented public health emergency has meant that there has been 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). Changes agreed in June and September have enabled 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. Given the successful operation of these measures since June 2020, the Planning Service have been able to work through a backlog of cases and run committee meetings effectively. Given the current position, it is not proposed to seek the continuation of the temporary changes to the scheme of delegation. However, there could be a continued need to be able to operate virtual meetings and it will be necessary to have the ability to send emails rather than letters and not rely on public venues being open to access planning applications. This is likely to remain the position for some time.*

*It is therefore recommended that:*

- The Mayor and Cabinet note the intention to cease the temporary changes to the Council's scheme of delegation.*
- The Mayor and Cabinet authorise temporary modifications the Council's Statement of Community Involvement (SCI) for a further 18 month period.*

## Timeline of engagement and decision-making

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

June 2020 – temporary modifications to the SCI agreed for a period of 3 months

September 2020 - temporary modifications to the SCI agreed for a further period of 6 months

December 2020 – permanent changes to the SCI to those sections addressing planning policy consultation approved by Mayor and Cabinet.

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## 1. Summary

- 1.1. In response to the Covid-19 pandemic, emergency temporary modifications to the Council's Statement of Community Involvement (SCI) were agreed by Mayor and Cabinet on 10<sup>th</sup> June 2020 in order to enable the determination of planning applications. The temporary changes which were introduced are (unless schemes are to be refused):
  - 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
- 1.2. It was agreed that the above changes to working practices would be reviewed by the Mayor and Cabinet after a 3 month period following introduction and following that review, they were extended for a further 6 month period in September 2020.
- 1.3. The temporary changes to the Council's Statement of Community Involvement were accompanied by parallel changes to the scheme of delegation which were agreed at Strategic Planning Committee. These were also reviewed in September 2020 and a 6 month extension was agreed.
- 1.4. Similarly, the public health emergency has meant that there was a need to review and adapt existing processes in relation to the preparation of planning policy documents which are set out in the SCI. This includes Local Development Documents that form part of the Council's statutory development plan. Furthermore, a review and update of existing processes is required to ensure the SCI appropriately reflects the latest legislation, national planning policy and guidance, having regard to changes introduced since the 2006 SCI was adopted.
- 1.5. Since their introduction in June 2020, the Planning Service have been applying the increased scheme of delegation threshold. At the beginning of February 2021, 41 decisions had been made by officers where there were 3 or 4 objections, 22 of which that would have otherwise had been determined at committee as the recommendation was for approval. The schemes have largely been small scale developments. The adjusted threshold has saved approximately 3 weeks on average that would normally be required for the process a committee meeting report preparation and a review of the decisions has shown that in most cases, issues raised were able to be successfully overcome via the imposition of conditions. The Planning Service have not seen an increase in complaints as a result of changes and the high quality of decision making has been retained.
- 1.6. Schemes with 5-9 objections or an amenity society objection have been subject to a Chair's Review meeting to determine whether a decision should be made by officers or

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committee. The Chair's Review meetings do not take a decision on if the planning application itself should be approved or refused, only who will be the decision maker for the application, based on a short presentation of the scheme and an overview of the material planning considerations/key issues. Following representations from amenity societies and feedback from the Council's Business Panel, a new field has been used on the Planning public access system to note the outcome of CRM meetings to ensure transparency on where a final decision would be taken. 47 schemes have been subject to this route as of the beginning of February 2021 with developments ranging from variations of conditions to development of a 6 storey building. 76% of schemes have been referred to officers to determine a development under delegated powers, with the remainder being decided by committee. In many instances, issues raised were able to be successfully overcome through the introduction of conditions. Those cases where more fundamental in principle objections were raised were more likely to be referred to planning committee. Reviews of the decisions made by officers has shown that the high quality of decision making and full and transparent analysis of objections in light of national, regional and local planning policies has still happened. Particular concerns were raised by amenity societies regarding the risk of harm to heritage assets in the Borough as a result of the automatic referral right to planning committees being removed. Officers have not seen evidence of this and remain confident that the decisions made have continued to appropriately protect and reflect the Borough's heritage assets.

- 1.7. Virtual planning committee meetings have been operating successfully in terms of public participation and decision making. They have been resource intensive, requiring additional officer support than would be needed for an in person meeting but the quality of decision making has been retained. An initial backlog of planning cases required regular meetings of all the planning committees but once cleared, the Planning Service have seen a reduction in cases requiring a committee decision due to the operation of the temporary scheme of delegation and Chair's Review meetings.
- 1.8. In order to ensure virtual committee meetings are conducted in an orderly fashion it has been 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. Public speakers are also now required 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. Both measures have been operating well and people have been taking part in virtual committees. Following early issues with attendees being able to operate their own technology successfully, additional support for members of the public in the form of a pre-committee test have also been introduced. These have been well received.
- 1.9. 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 face to face public meetings, a new electronic format for Local Meetings has been taking place to fulfil the same important role of community engagement. To date, this has largely relied on external IT support rather than a Council system, however progress is being made with an in house solution. 8 local meetings have taken place since June and have enabled public participation through an online meeting. A good level of public participation has been achieved and there has been no evidence of a reduction in engagement due to these measures.

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- 1.10. To avoid delays to postal deliveries, wherever possible, notification of Local Meetings (in their revised electronic format) and Planning Committee Meetings have been made by email. Where an individual's or group's email address has not been given, the Council has continued to communicate with them via post. This has been operating successfully.
- 1.11. At this time, libraries remain closed, as does 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 the SCI was updated to make it clear how the public can access this information such as via the Council website. The Planning Service have seen no indication that this has reduced participation in the planning process through the pandemic.
- 1.12. Officers consider that the temporary working arrangements and delegations have been operating successfully, albeit it is recognised that there has been much concern from amenity societies that their role in decision making has been weakened. Good quality decisions are being made under delegated powers on the most straightforward cases, with the cases being considered by planning committee being more complex or nuanced. The temporary measures have enabled the Planning Service to continue to issue decisions, engage with the public and reduce the committee backlog that had grown at the beginning of lockdown. The measures have not been found to give rise to concerns regarding the proper consideration of planning issues.
- 1.13. The pandemic has necessitated a level of change and adjustment to the Planning Service that has been unprecedented. Whilst the period has been challenging, it has shown that changes in how the service engages and undertakes the planning process in new ways, using technology has not disenfranchised the community. It is also evident that irrespective of where a decision is made, good quality decision making has been preserved throughout. Safeguards have been introduced through increased member involvement via Chair Review Meetings and call-in rights for ward Cllrs have also been retained throughout, ensuring proper democratic accountability remains at the heart of the planning process in Lewisham. This period has also shown that there is a need for flexibility in processes to enable the Council to respond to changes in circumstances.
- 1.14. Since September, Officers have again been progressing work on the Local Democracy Review recommendations related to planning during this period and agreement to progress with a range of measures to improve decision making, transparency and communication was given at the Local Democracy Review Working Group on 10<sup>th</sup> February 2021. The agreed recommendations include preparing proposals for a new SCI and any necessary associated changes and to undertake engagement with relevant stakeholders including a period of engagement with community groups as to how best to formally recognise them and a period of engagement with Members and the public regarding possible revisions to planning committees. As set out above, whilst challenging, it is considered that the temporary modifications have provided a useful period of learning and understanding. However, it is considered that that needs to be taken forward as part of a wider exercise in light of the LDR recommendations as opposed to continuing temporary modifications to the scheme of delegation.
- 1.15. Whilst noting that, it is considered that the measures that are necessary to enable virtual committee meetings if legislation allows and local meetings plus the ability to use electronic communication wherever possible and to make amendments to the publication of applications, agendas and decisions based on the availability of venues needs to continue. Given the uncertainty of the public health situation and the fact that these measures have operated successfully so far, it is proposed to continue these for

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18 months. This would enable the necessary Local Democracy Review work to be undertaken and implemented to eventually supersede the current SCI.

## 2. Recommendations

- 2.1. It is recommended that The Mayor and Cabinet:
- Note the intention to cease the temporary changes to the Council's scheme of delegation.
  - Authorise temporary modifications to the Council's Statement of Community Involvement (SCI) for a further 18 month period to enable the following:
    - 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
    - Local Meetings to be able to be held remotely
    - Make any necessary amendments regarding the publication of planning applications, agendas and decisions

## 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 and supporting documents, and how it will consult on planning applications. The SCI also sets out how the Council will fulfil its statutory duty to support neighbourhood planning. The Council must (as a minimum) comply with statutory requirements for consultation set out in relevant legislation and policy, 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
- Planning and Compulsory Purchase Act 2004 (as amended)
- The Town & Country Planning (Local Planning) (England) Regulations 2012 (as amended)
- Localism Act 2011 (as amended)
- The Neighbourhood Planning (General) Regulations 2012
- Neighbourhood Planning Act 2017
- Environmental Assessment of Plans and Programmes Regulations 2004
- Town and Country Planning (Local Planning) (England) (Coronavirus) (Amendment) Regulations 2020
- National Planning Policy Framework (NPPF) (2019) and National Planning Practice Guidance (NPPG).

## 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

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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.

- 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. This ends on 7<sup>th</sup> May 2021 and it is not yet known whether this will be extended beyond that date. Irrespective of any change to the SCI, legislation will be necessary in order to continue to hold virtual planning committees.
- 4.4. The current COVID-19 pandemic has meant 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 has the potential to persist for some time even if hybrid meeting formats are explored and it is important that the Planning service is prepared for that eventuality and in any event, to cover the period between March and May 2021. 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.
- 4.5. 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.
- 4.6. The 2006 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.

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## 5. Changes to the SCI

- 5.1. In order to ensure virtual committee meetings are conducted in an orderly fashion it has been 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. Public speakers are also now required 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. Both measures have been operating well and people have been taking part in virtual committees. Following early issues with attendees being able to operate their own technology successfully, additional support for members of the public in the form of a pre-committee test have also been introduced.
- 5.2. 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 in person, a new electronic format for Local Meetings has been taking place to fulfil the same important role of community engagement. To date, this has relied on external IT support rather than a Council system, however progress is being made with an in house solution. Eight local meetings have taken place since June and have enabled public participation through an online meeting.
- 5.3. To avoid delays to postal deliveries, wherever possible, notification of Local Meetings (in their revised electronic format) and Planning Committee Meetings have been made by email. Where an individual's or group's email address has not been given, the Council has continued to communicate with them via post. This has been operating successfully.
- 5.4. At this time, some libraries remain closed, as does 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 and could be unavailable for some time if venues are needed in the future to support with testing and vaccinations, it is proposed to continue to amend the SCI to make it clear how the public can access this information such as via the Council website.
- 5.5. In summary, it is recommended that The Mayor and Cabinet:
  - Note the intention to cease the temporary changes to the Council's scheme of delegation.
  - Authorise temporary modifications to the Council's Statement of Community Involvement (SCI) for a further 18 month period to enable the following:
    - 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
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## 6. Financial implications

- 6.1. This report is asking Mayor and Cabinet to authorise temporary modifications to the Council's Statement of Community Involvement (SCI) for a further 18 month period.
- 6.2. There are no significant financial implications relating to this report. 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 when these temporary measures were first introduced. It is lawful to take decisions on the basis of the new SCI if approved by the Mayor and Cabinet. 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. These changes have been in place since June and have not resulted in a lack of engagement.

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## 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 continue to 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 continue to record 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.

## 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/myservices/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.
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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