



Mayor and Cabinet

Crofton Park and Honor Oak Neighbourhood Plan, recommendations by independent examiner and permission to proceed to referendum.

Date: 09/03/2022

Key decision: Yes

Class: Part 1

Ward(s) affected: Crofton Park

Contributors:

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Outline and recommendations

This report outlines the process of the independent examination of the Crofton Park and Honor Oak Neighbourhood Plan and the modifications proposed.

It is recommended that Mayor and Cabinet

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

Timeline of engagement and decision-making

16nd July 2014 – Crofton Park and Honor Oak Neighbourhood Forum and Area formally designated

11th July 2019 – Crofton Park and Honor Oak Neighbourhood Plan Regulation 15 submitted to Council

20th October 2020 – Re-designation of Crofton Park and Honor Oak forum approved

15th March 2021 to 3rd May 2021 – Regulation 16 public consultation held

July 2021 to Dec 2021 – Independent Examination held

17th December 2021 – Final examiners report submitted to council

1. Summary

- 1.1. Crofton Park and Honor Oak Neighbourhood forum (the Forum) are a community organisation based in the Crofton Park ward of LB Lewisham who have been formally designated as the qualifying body for the purposes of Neighbourhood Planning.
- 1.2. The Forum was formally designated by Mayor and Cabinet for a 5 year period on 16th July 2014 in accordance with;
 - section 61F(5) of the Town and Country Planning Act 1990 as applied to section 38A of the Planning and Compulsory Purchase Act 2004,
 - Localism Act (2011)
 - Neighbourhood Planning Regulations (2012) “the Regs”
- 1.3. The Crofton Park and Honor Oak Neighbourhood Area was formally designated by Mayor and Cabinet on 22nd October 2014. The Forum acts as the qualifying body for the purposes of Neighbourhood Planning that fall within the designated area.
- 1.4. As the 5 year designation of the forum lapsed on 16th July 2019, the forum was formally re-designated in accordance with the statutory requirements highlighted in 1.2. Due to the Council’s updated constitution regarding Neighbourhood Planning matters, the approval for the re-designation was made through an executive decision made by Emma Talbot, Director of Planning, on the 20th October 2020. The re-designation will again last for a period of 5 years.
- 1.5. In June 2021 Lewisham council appointed Deborah McCann BSc MRICS MRTPI Dip Arch Con Dip LD as the independent examiner for the Crofton Park and Honor Oak Neighbourhood Development Plan with the agreement of the Forum.
- 1.6. The independent examiner’s report outlining her recommendations was submitted to the Council on 17th December 2021. Council officers along with the Forum have agreed to accept the modifications and recommendations to the Crofton Park and Honor Oak Neighbourhood Development Plan made in the examiner’s report.

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- 1.7. Subject to Mayor and Cabinet approval the referendum for the Crofton Park and Honor Oak neighbourhood plan will be the 5th of May 2022. The voting option for the neighbourhood plan will appear on a separate ballot paper as that of the local Council and Mayoral elections within the Crofton Park ward only.

2. Recommendations

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

3. Policy Context

Planning

- 3.1. The Forum were designated by the Council as the qualifying body to lead the neighbourhood planning process, including the drafting of a neighbourhood development plan as set out in 61F(5) of the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by section 38A of the Planning and Compulsory Purchase Act
- 3.2. The neighbourhood development plan is required to be consistent with national, regional and local planning policy and to meet basic conditions whilst drafting policies that relate to the development and use of land within a designated neighbourhood area.
- 3.3. The basic conditions that are required to be met by law are set out in the following policies::
- Paragraph 8(2)(g) of Schedule 4B to the Town and Country Planning Act 1990
 - Section 38A of the Planning and Compulsory Purchase Act 2004
 - Section 38B of the Planning and Compulsory Purchase Act 2004
 - Localism Act 2011
 - Neighbourhood Planning(General) Regulations 2012
 - Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017
- 3.4. In addition to the above the neighbourhood development plan also needs to meet the following regulations:
- Article 8 of the European Convention on Human Rights
 - Environmental Assessments of Plans and Programmes Regulations 2004
- 3.4. The draft Neighbourhood Development Plan must also be in general conformity with the strategic policies of Lewisham Local Development Framework adopted 2011 and the London Plan 2011 (as revised 2016). The adopted plan at the time of the examination.
- ### Corporate strategy
- 3.5. The Council's Corporate Strategy (2018-2022) outlines the Council's vision to deliver for residents over the next four years. Building on Lewisham's historic values of

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

3.6. Neighbourhood planning contributes to the following corporate priorities:

- **Open Lewisham** – Lewisham is a welcoming place of safety for all where we celebrate the diversity that strengthens us
- **Tackling the Housing Crisis** – Providing a decent and secure home for everyone;
- **Building an Inclusive Economy** – Ensuring every resident can access high-quality job opportunities, with decent pay and security in our thriving and inclusive local economy; and
- **Making Lewisham greener**- Everyone enjoys our green spaces and benefits from a healthy environment as we work to protect and improve our local environment

4. Background

4.1. The Plan was submitted to the Council by the Forum for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 on the 11th July 2019. The suite of documents submitted are listed as:

- The Crofton Park and Honor Oak Neighbourhood Plan 2017-2027
- The Crofton Park and Honor Oak Neighbourhood Plan Basic Conditions
- The Crofton Park and Honor Oak Neighbourhood Plan Consultation statement

4.2. An initial assessment of the plan was undertaken by Council officers. This assessment determined that the plan met the appropriate requirements and could be progressed to the next stage.

4.3. Due to the Covid-19 pandemic all neighbourhood planning activities were paused from March – Aug 2020 due to council officers being redeployed to support the Council's Covid-19 response

4.4. The Council then held a Regulation 16 public consultation which ran for a 7 week period from 15th March 2021 to 3rd May 2021. The Council received a total of 15 representations from members of the public and statutory consultees. All responses made during the Regulation 16 public consultation were made available on the Council website. The content of the plan did not change as a result of the public consultation.

4.5. Deborah McCann BSc MRICS MRTPI Dip Arch Con Dip LD known as the “examiner” was appointed as the independent examiner by the Council in agreement with the Forum in June 2021

4.6. The examination period ran from July 2021 until December 2021 with the examiner's report being formally submitted to the Council on 17th December 2021. Throughout the independent examination stage officers updated the Forum on the progression of the examination as well as the expected date for the publication of the examiner's report and decision notice outlining the Council's decision.

5. Examiners report

5.1. The Examiner's report independently scrutinises the process of drafting a neighbourhood development plan from forum and area designation to examination. The examiner also scrutinises whether the plan meets the basic conditions and can therefore be recommended to proceed to a public referendum.

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- 5.2. The examiner is required to make one of the following recommendations based on the examination of the plan:
- The Plan can proceed to a Referendum
 - The Plan with the recommended modifications can proceed to Referendum
 - The Plan does not meet the legal requirements and cannot proceed to Referendum
- 5.3. The examiner is also required to recommend whether the referendum area should be different from the Plan Area defined by the designation of the Crofton Park and Honor Oak Neighbourhood Area approved by Mayor and Cabinet, 16th July 2014
- 5.4. The examiner's intention when examining the plan must focus on its compliance with the basic conditions. The examiner is permitted to modify the policy text in order to achieve this.
- 5.5. The examiner may also modify policy text or delete a policy or parts of its text if the policy has elements which either seeks to enforce controls that fall outside of the scope of neighbourhood planning or introduce requirements which are indiscriminate in terms of the size of development or are overly onerous and would not meet the Basic Conditions.
- 5.6. In the examiner's report it states that although modifications may be made, the examiner has a duty to ensure, where possible, that the intention and spirit of the plan is retained so that the plan, when modified still reflects the communities intent in producing their neighbourhood plan.
- 5.7. All modifications to policy text made by the examiner as a result of the examination can be found in examiners report (appendix1) and table 1 of the decision notice (appendix 2)

6. Recommendations and conclusions made by the examiner

- 6.1. The recommendations and conclusions made by the examiner as set out in the examiner's report are:
- *I find that the Crofton Park and Honor Oak Neighbourhood Development Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012. (as amended)*
 - *The Neighbourhood Plan does not deal with County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.*
 - *The Crofton Park and Honor Oak Neighbourhood Development Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Development Plans in place within the Neighbourhood Area.*
 - *The Strategic Environmental and Habitats Regulations Assessment screening and SA meet the EU Obligation.*
 - *The policies and plans in the Crofton Park and Honor Oak Neighbourhood Development Plan, subject to the recommended modifications would contribute to achieving sustainable development. They have regard to national policy and to guidance, and generally conform to the strategic policies of the development plan*

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which comprises of the adopted Lewisham LDF (core strategy and Development management plan) and the London Plan 2011(as revised 2016).

- *I therefore consider that the Crofton Park and Honor Oak Neighbourhood Development Plan subject to the recommended modifications can proceed to Referendum*

7. Conclusions

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

8. Financial implications

- 8.1. The Council has a statutory duty to support the preparation of neighbourhood plans through the neighbourhood plan making process. As part of this statutory function the Council is responsible for facilitating a public referendum. The Council receives £20k Government funding to cover the costs of advertising and facilitating a referendum on the plan once it has been prepared.
- 8.2. The Council's Electoral Services team has provided an estimated cost of up to £19k for undertaking a referendum.
- 8.3. A budget of £70k was allocated in the 2021/22 budget process to cover the cost of neighbourhood planning support. This will be used to cover any costs over and above Government funding. No further Council funding is required to meet the recommendations of this report.

9. Equalities implications

- 9.1. The Crofton Park and Honor Oak Neighbourhood plan has undergone a Sustainability Appraisal process which incorporates the requirements of the SEA Directive. This reflects the socio-economic issues which the Neighbourhood Plan seeks to address. It also reflects the desire of the Neighbourhood Forum to effectively consider health and equalities issues through the Neighbourhood Plan area. The sustainability appraisal was carried out by consultants AECOM.

10. Legal implications

- 10.1. The Neighbourhood Planning (General) Regulations 2012 (the 2012 Regulations) the [Schedule 4B](#) to the Town and Country Planning Act 1990 ([TCPA 1990](#)) and the Neighbourhood Planning (Referendums) Regulations 2012 ("the referendum regulations"), set out the procedure for the independent examination and referendum

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for Neighbourhood Development Plans

- 10.2. The 2012 Regulations requires that the Council as the Local Planning Authority (“the LPA”) reach their decision whether to follow the Examiner’s recommendations within five weeks (from the date the LPA receives the examiner’s report), unless:
- the LPA proposes to make a decision which differs from that recommended by the examiner, or
 - an LPA and a neighbourhood group agree that more time than the proposed five-week period will be required to reach a decision
- 10.3. In this case the Forum has agreed with the LPA that more time was required to reach a decision.
- 10.4. The LPA can progress a Neighbourhood Plan to a referendum if it is satisfied that the draft NDP meets the basic conditions mentioned in the TCPA 1990 and is compatible with the Convention rights being those set out in paragraph 3.4 of this report.
- 10.5. The 2012 Regulations in the present circumstances require that a referendum on a proposal for an NDP must be held within 56 days from the day after an LPA publishes its decision that a referendum must be held. However the referendum regulations provide that this requirement does not apply where:
- the LPA and the qualifying body agree that the referendum need not be held by this date
 - the poll at the referendum is taken on the same day as another poll in accordance with regulation 11 of the 2012 Regulations (whether or not the polls are taken together), provided that day is no later than the date 65 days from the day after an LPA publishes its decision that a referendum must be held, or
 - proceedings for questioning the decision that the referendum must be held have been brought in accordance with TCPA 1990, s 61N(2)

In the current circumstances the Mayoral and Local Government elections are due to take place on the 5th May 2022 and therefore Regulation 2a of the referendum regulations applies and if members approve the recommendation set out in this report it is intended that the referendum will take place on the same day.

- 10.6. The referendum regulations prescribes the question to be asked in the referendum and a simple majority of votes (over 50% of those voting) in favor of the NDP is sufficient for it to succeed. If the vote is in favor of the NDP it must be made within eight weeks of the date of the referendum, unless there are unresolved legal challenges to the decision either to hold the referendum or in relation to the conduct of the referendum.
- 10.7. The LPA adopts the NDP as part of the development plan. If there is any conflict between the NDP and the local plan, the NDP takes precedence
- 10.8. The Equality Act 2010 (the Act) introduced the public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, Page 413 religion or belief, sex and sexual orientation.
- 10.9. In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

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- advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 10.10. The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor and Cabinet, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which the Council can demonstrate that they have had ‘due regard’.
- 10.11. The Equality and Human Rights Commission issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with services and public functions. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
- <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 10.12. 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
- 10.13. 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/>
- 10.14. It is also important to note that the Council is subject to the Human Rights Act, and should therefore, also consider the potential impact their particular decisions could have on human rights. Some of these rights are unconditional, others may be limited in finite and well defined circumstances and others are qualified and must be balanced against the need of the wider community, such as the right to a private and family life. Where there are human rights implications associated with the proposals in this report regard must be had to them before making any decision. The examiner in her report at paragraph 4.11.2 concluded that she was satisfied that the NDP subject to modification meets the basic conditions on EU obligations.

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11. Climate change and environmental implications

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

12. Crime and disorder implications

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

13. Health and wellbeing implications

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

14. Background papers

- 14.1. Appendix 1 Examiners Report (December 2021)
- 14.2. Appendix 2 Decision Notice
- 14.3. Appendix 3 The Crofton Park and Honor Oak Neighbourhood Plan (Regulation 16 version)

15. Report author and contact

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

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

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