

Item No.	Classification: Open	Date: 13 September 2012	Decision Taker: Leader of the Council
Report title:		Neighbourhood Planning – Council Decision Making	
Ward(s) or groups affected:		All	
From:		Chief Executive	

RECOMMENDATION

That the Leader:

1. Agrees the proposed decision making processes for neighbourhood planning set out in paragraph 17 of the report.

BACKGROUND INFORMATION

2. The Localism Act 2011 introduced new processes for communities to get involved in the planning of their areas through the preparation of neighbourhood plans and neighbourhood development orders. The powers came into force on 1 April 2012 with the publication of associated neighbourhood planning regulations. This provides local communities through parish councils or neighbourhood forums to be able to shape and encourage delivery of new development.
3. The Act introduces procedures for making neighbourhood plans and neighbourhood development orders. A neighbourhood plan may contain a range of policies or proposals for land use development that will be used as part of determining decisions on planning applications. It can also grant planning permission through neighbourhood development orders for a particular, defined type of development in an area or a specific site. We would expect neighbourhood development orders to be part of neighbourhood plans. The new processes require decisions to be made by the council at various stages to approve an area for the preparation of a neighbourhood plan, to recognise neighbourhood forums and various other matters and this report recommends procedures for making these decisions to be adopted by the council. The Act and the associated regulations say that neighbourhood plans (and neighbourhood development orders) may be prepared by 'qualifying bodies' which, where they exist, would be a parish council where they exist and in other areas would be a neighbourhood forum set up for this purpose.
4. The local authority must agree to a neighbourhood forum being a 'qualifying body' for the purposes of the Act and must agree the area for which a neighbourhood plan or development order is to be prepared. There are specific requirements set out in the Act and the neighbourhood planning regulations for neighbourhood forums to be designated as qualifying bodies and for the local authority to set other conditions.
5. Early on in the passage of the Localism Bill through parliament, the government invited local authorities to apply to be neighbourhood planning 'vanguards' – later renamed 'front runners' – who would be asked to work with emerging neighbourhood forums and demonstrate some of the principles on which

neighbourhood plans would be prepared. Southwark proposed two front runner projects: to work with a newly formed neighbourhood forum in the Bermondsey area and with the long established Bankside Residents Forum in the Bankside area. These were approved in March 2011 and the council has continued to work with these forums. There have also been early discussions about a forum at the Elephant and Castle.

KEY ISSUES FOR CONSIDERATION

Southwark Council's role

6. While Southwark Council has a long track record of working with local communities to establish strong local support for plans and proposals, the Act establishes new features in that neighbourhood forums are intended to lead the process of preparing each neighbourhood plan with the support of the local authority. Neighbourhood plans can provide an additional level of detail and express the community's wishes in relation to development sites including identifying potential development that has not been identified through the normal planning process. The plans may also be the subject of a local referendum.
7. If proposals come forward for overlapping areas the council will need to arbitrate, and decide which boundary makes most sense in planning terms.
8. The local planning authority has to provide 'technical advice and support' to communities preparing neighbourhood development plans but it's up to the council to decide what this should be. It could include gathering evidence, helping with facilitation or advice on consultation. It can, but doesn't have to include financial support. This will depend on resource availability, community requirement, evidence available, whether a sustainability appraisal is required and the volume of neighbourhood planning activity that comes forward.
9. Once the plan is submitted the council has to check to make sure that consultation procedures have been followed. If they have then the council needs to arrange and pay for an independent examination. This would be similar to the process of examination in public but, the government says, should often be carried out through written representations.
10. The ambition of the neighbourhood plan needs to be in general conformity with the strategic needs and priorities of the wider local area. To enable this to happen, the council must make sure that their strategic policies are up to date. Therefore this independent check will look at how the plans/orders fit against the local plans, London Plan, national policies, and any adjoining neighbourhood plans.
11. If it passes the check, the council needs to arrange (and pay for) a referendum on the plans or order. The referendum can go beyond the neighbourhood area if its impacts will be felt more widely.

Decision making

12. It is possible that the council will receive applications for recognition of neighbourhood forums from many areas. While some neighbourhood forums may be considered not truly representative, others may be proposing an area where it is not appropriate to prepare a neighbourhood plans at that time. There may also be cases where the aims of the community proposing a neighbourhood

plans might be best achieved by some other means. The council should therefore state some clear guidelines and criteria for recognising neighbourhood forums and supporting neighbourhood plans. It may be possible in some cases for a neighbourhood plan to be adopted by the council by converting it into local development document under the local development framework regulations or into a local development order. This may obviate the need for a referendum.

13. All proposals must be considered at the community council or community councils covering the area. One of the requirements is for local consultation and involvement of local wards members. The decision maker will be taking into account the response of the ward members at community council when making decisions so this is an important part of the adoption process.
14. A Neighbourhood Forum may cover more than one borough. If an application is submitted for an area that covers Southwark and an adjoining borough such as Lambeth or Lewisham then the Portfolio holders will meet to consider whether a joint response can be made to the Forum. Both boroughs must designate the Forum for it to be able to operate within the area proposed.
15. The processes for neighbourhood planning are set out in Table A below along with the type of decision required by the local authority and who the decision taker should be.

Financial implications

16. There may be financial implications however these are uncertain at present. Each neighbourhood plan may require a referendum which would spend considerable funds. A ward election would cost around £25, 000 per referendum. These costs could be similar to a ward election. They are unavoidable and there is no budget for them. Furthermore, at this stage it is not possible to predict if, when or how this/these referendum/s could take place.

APPLICATION FOR DESIGNATION OF A NEIGHBOURHOOD AREA

17. There are a number of decisions that need to be made which are set out below at Table A.

		Type of decision
Decision 1	<p>Application for designation of a Neighbourhood Area</p> <p>Process</p> <p>Where a neighbourhood forum submits an application to the local Planning authority. It must include:</p> <ul style="list-style-type: none"> • A map identifying the area • A statement explaining why this area is considered appropriate to be designated • A statement that the organisation or qualifying body is relevant for the purposes of the 1990 Act (as applied by section 38A of the 2004 Act) 	<p>An IDM (relevant portfolio holder) to send the application for 6 weeks consultation</p> <p>Planning committee and community council need to be consulted as part of the consultation.</p> <p>An IDM (relevant portfolio holder) decision to consider the consultation responses and decide whether to designate an area.</p>

		Type of decision
	<p>As soon as possible after receiving an area application from a relevant body a local planning authority must publicise on their website and any other ways considered relevant: a copy of the application, details of how to make representations and the date by which they must be received,</p> <p>Criteria for decision making</p> <ul style="list-style-type: none"> • Has the map been submitted identifying the area? • Has the statement explaining why this area is considered appropriate to be designated been submitted? • Has the statement that the organisation or body is relevant for the purposes of the 1990 Act been submitted? • Is there already a neighbourhood plan covering this area? • How do the boundaries relate to current and proposed planning designations? • Is the proposed area appropriate? • Should the area be a business area? Would a business referendum be required? <p>Publicising the application</p> <p>As soon as possible the council must publicise on the website and in any other ways considered relevant the name of the neighbourhood area, a map, the name of the body who applied for the designation.</p> <p>Publicising designation</p> <p>As soon as possible after designating a neighbourhood area, a local planning authority must publish the following on their website and in such other manner as they consider is likely to bring the designation to the attention of people who live, work or carry on business in the neighbourhood area—</p> <ul style="list-style-type: none"> (a) the name of the neighbourhood area; (b) a map which identifies the area; and (c) The name of the relevant body who applied for the designation. 	

		Type of decision
	<p>Publicising refusal to designate</p> <p>As soon as possible after deciding to refuse to designate a neighbourhood area a local planning authority must publicise on their website and in any other way considered relevant a document setting out the decision and a statement of their reasons for making that decision (“the Decision Document”) along with details of where and when the Decision Document may be inspected</p>	
Decision 2	<p>Application for designation of a neighbourhood forum</p> <p>Application</p> <p>Where an organisation or body submits an application to the local planning authority it must include</p> <ul style="list-style-type: none"> • The name of the proposed forum • A copy of the written constitution of the proposed Forum • The name of the neighbourhood area to which the application relates and a map identifying the area • The contact details of one member of the forum to be made public • A statement to explain how the forum meets the conditions contained in the 1990 act (as applied by section 38A of the 2004 Act) <p>Criteria for decision making</p> <ul style="list-style-type: none"> • Has the name of the proposed forum been submitted? • Has the timescale of the plan been specified? • Has a copy of the written constitution of the proposed forum been submitted? • Has the name of the neighbourhood area to which the application relates and a map identifying the area been submitted? • Have the contact details of one member of the forum to be made public been submitted? • Is there a statement to explain how the forum meets the conditions contained in the 1990 Act. These should include whether it is established for the 	<p>IDM (relevant portfolio holder) report to send the application for 6 weeks consultation</p> <p>Consult Planning committee and community council as part of the consultation</p> <p>IDM (relevant portfolio holder) decision to consider the consultation responses and decide whether to designate a Forum</p>

		Type of decision
	<p>purpose of promoting or improving the social, economic and environmental wellbeing of the neighbourhood area. Whether its membership is open to individuals who live, work, and/or are elected to the area?</p> <ul style="list-style-type: none"> • Does membership include a minimum of 21 individuals who live or work in the area or are an elected member? • Does it have a written constitution? • Is membership drawn from different places in the neighbourhood and from different sections of the community? • Does the purpose reflect the character of the area? • Is there already a neighbourhood forum for that area? • What is the length of the designation as a designation ends after 5 years? <p>A local planning authority may withdraw an organisation's designation if they consider that it is no longer meeting the criteria above or other criteria that the authority are required to have regard in making a designation. If this were to be the case the local planning authority has to give reasons.</p> <p>Publicising the application</p> <p>As soon as possible after receiving a neighbourhood forum application, which the LPA do not decline to consider under Regulation 11, a local planning authority must publish on the website and in any other way it considers appropriate:</p> <ul style="list-style-type: none"> • A copy of the application • A statement that if a designation is made no other organisation or body may be designated for that neighbourhood until it expires or is withdrawn • Details of how to make representation • The date by which those representations must be received not being less than 6 weeks from the date the application is first publicised. <p>Publicising the designation</p> <p>As soon as possible after designating a neighbourhood forum a local planning</p>	

		Type of decision
	<p>authority must publish the following on the website and in any other way it considers appropriate:</p> <ul style="list-style-type: none"> • The name of the neighbourhood forum • A copy of the written constitution • The name of the area • Contact details for at least 1 member • A statement setting out the decision and the reasons • Details of where and when the decision statement/refusal statement may be inspected <p>Publicising refusal to designate</p> <p>As soon as possible after deciding to refuse to designate a neighbourhood area a local planning authority must publicise on their website and in any other way considered relevant a document setting out the decision and a statement of their reasons for making that decision (“the Decision Document”) along with details of where and when the Decision Document may be inspected</p>	
Decision 3	<p>Subsequent applications</p> <p>Where a neighbourhood forum has been designated in relation to a neighbourhood area and that designation has not expired or been withdrawn, a local planning authority may decline to consider any other neighbourhood forums for that area.</p>	IDM (relevant portfolio holder)
Decision 4	<p>Voluntary withdrawal of designation</p> <p>Where a neighbourhood forum gives notice to a local planning authority that it no longer wishes to operate the local planning authority must withdraw the designation as soon as possible and publish the following on the website and in any other way it considers appropriate</p> <ul style="list-style-type: none"> • A Withdrawal Statement, setting out the reasons for withdrawal • Details of where withdrawal statement can be inspected <p>Neighbourhood development plans - Pre-submission consultation and publicity</p>	IDM (relevant portfolio holder)

		Type of decision
	<p>Before submitting a plans proposal to the local planning authority a neighbourhood forum must publicise the plans to people who live, work or use the area the following</p> <ul style="list-style-type: none"> • Details of the proposals • Details of where and when the proposals may be inspected • Details of how to make representations • The date by which those representations must be received (at least 6 weeks) • Consult consultation bodies in schedule 1 paragraph 1 of the regulations • Send a copy of the proposals to the local planning authority 	
Decision 5	<p>Neighbourhood development plans - Plans proposals</p> <p>The local planning authority will then carry out the checks on the Neighbourhood Plans.</p> <p>Criteria for decision making</p> <p>Does it include</p> <ul style="list-style-type: none"> • A map or statement which identifies the area? • The proposed neighbourhood development plan? • A statement explaining how the Plan meets the requirements of the 1990 act (as applied by section 38A of the 2004 Act) schedule 8 of paragraph 4B? • A consultation statement which must contain details of who was consulted, how and the main issues and concerns along with how they have been addressed in the Plans? • Specification of the period for which it is to have effect? • Provision for excluded development? (It must not have this) • Relate to only 1 neighbourhood area? • Does any policy conflict with any other statement or information in the Local Plans? If it does the conflict must be resolved in favour of the Local Plans. <p>Neighbourhood development plans - publicising plans proposals</p>	<p>IDM (relevant portfolio holder)</p> <p>Consultation will be for 6 weeks</p>

		Type of decision
	<p>As soon as possible after receiving a proposal the local Planning authority must publicise the following on their website and wherever else they consider appropriate</p> <ul style="list-style-type: none"> • Details of the proposal • Where and when it may be inspected • Details of how to make representations • A statement that representations may include a request to be notified under regulation 19 • The date for representations to be received (being not less than 6 weeks from the date on which the plan proposal is first publicised) • Notify any consultation body referred to in Consultation statement that plan proposals have been received. 	
Decision 6	<p>Appointment of examiner and submission of neighbourhood plans for examination</p> <p>The local authority appoints an examiner as soon as possible to carry out an examination under paragraph 7 of schedule 4B to the 1990 act (as applied by section 38A of the 2004 Act).</p> <p>The local authority must send the following to the examiner:</p> <ul style="list-style-type: none"> • The neighbourhood plan proposal • The documents referred to in regulation 15(1) and any other document submitted to the local Planning authority by the qualifying body in relation to the Plans proposal. • The Conservation of Habitats and Species information if relevant • Copies of representations which have been made in accordance with regulation 16. 	Chief officer Technical decision who to appoint
Decision 7 (non LPA Decision)	<p>Examination</p> <p>Criteria for decision making</p> <ul style="list-style-type: none"> • The neighbourhood plan must have regard to national planning policy • The neighbourhood plan must be in general conformity with strategic policies in the development Plans for the local area (i.e. such as in a core strategy) 	Examiner

		Type of decision
	<ul style="list-style-type: none"> The neighbourhood plan must be compatible with EU obligations and human rights requirements Consultation requirements must have been carried out in accordance with the Act and Regulations. 	
Decision 8	<p>Neighbourhood development plans - referendum</p> <p>The Local authority decide on the following:</p> <ul style="list-style-type: none"> The conduct of the referendum The boundary for consultation, this should include everyone within the area and anyone where there is an impact outside the area Whether the referendums need to be for residents and also for businesses. Proposed neighbourhood plans need to gain the approval of a majority of voters for the plan to come into force In the case that two referendums have taken place with two different results the local authority will need to adjudicate and decide whether to progress the plan to council assembly If proposals pass the referendum the local planning authority is under a legal duty to bring them into force. <p>The referendum regulations are currently out to consultation. Referendums will need to be held as set out in these regulations once they are adopted.</p>	IDM (relevant portfolio holder)
Decision 9	<p>Neighbourhood development plans - Decision on a plan proposal</p> <p>The local planning authority makes the decision whether to adopt the neighbourhood plan. They may:</p> <ul style="list-style-type: none"> Decline to consider a plan proposal under paragraph 5 of schedule 4B to the 1990 Act applied by 38A of the 2004 Act Refuse a plan proposal under paragraph 6 of schedule 4b to the 1990 Act applied by 38A of the 2004 Act Reconsult in response to the recommendations of an examiner made in a report. Consider what modifications if any they 	Cabinet

		Type of decision
	<p>are to make to the draft Plans under paragraph 12(6) of Schedule 4B of the 1990 act applied by 38A of the 2004 Act</p> <ul style="list-style-type: none"> • whether to extend the area to which the referendum is (or referendums are) to take place; or • That they are not satisfied with the plan proposal under paragraph 12(10) of Schedule 4B to the 1990 Act (as applied by section 38A of the 2004 Act). <p>Neighbourhood development plan – Publicising the Examiner report and decision</p> <p>As soon as possible after deciding to make a plan or refuse to make a plan a local planning authority must</p> <ul style="list-style-type: none"> • Publish on their website and in any other way it considers appropriate • A statement setting out the decision and their reasons – the decision statement • The report by the examiner • Details of where and when the decision statement may be inspected • Send a copy of the decision statement to the qualifying body and any person who asked to be notified of the decision <p>Publicise a neighbourhood development plan</p> <p>As soon as possible after making a neighbourhood development plan under section 38A(4) of the 2004 Act the local authority must</p> <ul style="list-style-type: none"> • Publish on the website and in whatever way they consider appropriate to bring it to the attention of people who live, work or carry out business in the area • The Neighbourhood development plan • Details of where and when the plan can be inspected and • Notify any person who asked to be notified where and when it may be inspected. 	
Decision	Publicising of a modification to the	IDM (relevant portfolio

		Type of decision
10	<p>neighbourhood development plan (Reg 30)</p> <p>As soon as possible after modifying a neighbourhood development plan by section 38C of the 2004 Act a local planning authority must publish on their website and in any other way it considers appropriate</p> <ul style="list-style-type: none"> • A document setting out details of the modification 'the modification document' • Details of where and when the modification document may be inspected • Send a copy of the decision statement to the qualifying body and any person who was previously notified of the making of the neighbourhood development plan. 	holder)
Decision 11	<p>Publicising revocation of the neighbourhood development plan (rag 31)</p> <p>As soon as possible after the revocation of a neighbourhood development plan by section 38C of the 2004 Act a local planning authority must publish on their website and in any other way it considers appropriate</p> <ul style="list-style-type: none"> • A document setting out details of the revocation 'the revocation document' • Details of where and when the revocation document may be inspected • Send a copy of the revocation document to the qualifying body and any person who was previously notified of the making of the neighbourhood development plan. • Send a copy of the revocation document to any other person the local planning authority consider necessary to bring the revocation to their attention. • Cease to make the revoked neighbourhood development plan available on their website and at any other place where it was available for inspection. 	IDM (relevant portfolio holder)

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

Decision Making

18. The Localism Act 2011 (“the Act”) introduced new rights and powers enabling communities to shape new development through a statutory process of neighbourhood planning.
 - (i) It is recommended that the Leader of the Council, Councillor Peter John approves the decision making process for decisions numbered 1-15 relating to neighborhood planning as set out in Table A at paragraph 13 of the Report. The approval of the recommendation will facilitate implementation of the process of neighborhood planning in the borough and the consequent administrative functions required of the council. Broadly speaking key decisions include the designation of Neighborhood Areas (“NA”) and Neighborhood Forums (“NF’s”), the making of Neighborhood Development Plans (“NDP’s”) and Neighborhood Development Orders (“NDO’s”) and the holding of referendums.
 - (ii) The procedural and legislative provisions in relation to neighbourhood planning are set out in the Neighborhood Planning (General) Regulations 2012 No.637 (“the Regulations”), Neighbourhood Planning (Referendum) Regulations 2012 (as yet not in force) and the Town and Country Planning Act 1990 (TCPA). S116 of the Localism Act 2011 inserts Sch9, Part 1 into the (TCPA) and Planning and Compulsory Purchase Act 2004.
19. Neighborhood planning is a new legal process, which the council has a statutory duty to facilitate and administer. The Act, Regulations and the Local Government (Functions and Responsibilities Act) England Regulations 2010 are silent as to the appropriate decision making process. Consequently and given the recent enactment of these provisions, the Southwark Constitution is also silent as to the mode or reservation of such decisions. Consideration has been given to the nature of and the appropriate level at which neighbourhood planning decisions can be made, whilst ensuring the process is fair and transparent. The Regulations are directed at the council as local planning authority, although, most decisions are of an administrative nature and to be taken against a specific set of criteria (e.g. as to the characteristics of a qualifying body that may constitute a forum). Therefore, it is considered that most decisions can be taken either by the relevant cabinet member or the relevant chief officer, presently the director of planning.
20. The recommendation is within the individual decision making remit of the Leader of the Council who has responsibility for agreeing strategies, performance standards, consultation arrangements and policy objectives relating to his specific area (see *functions 6, 8 and 14, Part 3D, Southwark Constitution 2011/12*).
21. As noted these decisions are not reserved to Council Assembly, cabinet or any committee. Therefore pursuant to *Part 3P: Matters Delegated to Officers* it is also appropriate for the relevant chief officer, namely the director of planning subject to make certain decisions concerning neighbourhood planning. In particular decisions of a technical nature (i.e. decision 6: appointment of examiner and decision 8: referendums which are decisive) are at this stage

recommended for delegation to chief officer in consultation with the relevant cabinet member.

22. Consistently with the Constitution, 'it is the responsibility of and duty of chief officers to ensure that where appropriate matters of a controversial nature, or involving significant changes in policy, are consulted upon with the relevant cabinet member and recorded or reported to the cabinet, council assembly and committee as appropriate'.
23. Moreover, an individual decision maker whether a chief officer or cabinet member should endeavour to exercise the authority delegated to them in relation to neighbourhood planning. However, where any particular decision set out in Table A is deemed controversial in nature, raises cross boundary or other significant / sensitive issues, the decision may be referred by either chief officer or cabinet member and can taken by the parent body (*Part 3P: Constitution*).
24. Pursuant to the Constitution the Leader's role is to provide leadership in setting the council's strategic directions, and key priorities, in performance management and community engagement (*Part 3B, Cabinet Portfolios, Constitution*). Therefore, the implementation of these administrative decision making processes in relation to neighbourhood planning falls within the Leader's individual decision making remit. The Leader is advised to approve the decision making process set out in Table A having regard to the contents of this report.
25. The Leader will note that, whilst applications for a neighbourhood development plan (post designation of a neighbourhood forum or area) are submitted to the LPA, this process does not entail making new planning policy. Neighbourhood development plans must first and foremost be in general conformity with the Core Strategy and the statutory development plan, thus amounting to administrative decisions which do not require the exercise of substantive discretion. It is considered that all decisions related to neighbourhood planning fall within the remit of the Leader or Cabinet Member(s) responsible for planning or regeneration. Planning Committee and the respective community councils will be consulted as part of any publicity or consultation process at each relevant stage.

Applications

26. The report advises that neighbourhood planning is intended to provide communities with a greater influence over the development of their local area by enabling them to draw up neighbourhood development plans and orders. Regulations 6, 7, 9 and 10 set out the procedure for the content of applications, designation and publication by the council.

Publicity / Consultation

27. Various stages in the neighbourhood planning process as a whole require publicity to be undertaken (Regulations 14,16,18,20,21,23,25,27 and 30). The Leader will note the consultation periods set out in Table A at paragraph 13. The only mandatory requirement that the LPA must adhere to is the requirement to publicise relevant documents upon its web-site for a period of not less than 6 weeks. It is a matter of discretion for the LPA to determine whether other forms of publicity may be appropriate. The process bears some similarity to plan making (albeit by the relevant neighbourhood forums/community) in that neighbourhood plans will be taken into account in future planning decisions and

the process is designed to encourage greater engagement. [Therefore, a consultation period of [6 or 12] weeks may be appropriate for publicising proposals for a neighbourhood development plan or orders (as opposed to the minimum statutory period of 6 weeks) consistently with the council's Statement of Community Involvement ('SCI').] The council may consider other methods of consultation (in addition to publication of website) in a manner consistent with its SCI. Equally in relation to proposals concerning neighbourhood plans and orders, consulting community councils and planning committee at relevant stages is appropriate.

The neighbourhood planning process

28. The Leader will note that the Act provides that Neighbourhood Planning can be progressed by two types of qualifying bodies, namely town and Parish Council's or Neighbourhood Forums. The form of qualifying body applicable to London Borough Council's is neighbourhood forums which act as the vehicle for progressing neighbourhood development plans in respect of a particular neighbourhood area.
29. The latter is a geographical area defined by Section 61G 1990 Act. These areas must be designated by the LPA, following the submission of a proposal application from a neighbourhood forum (Regulations 8 and 9). The content of the proposal application must be in accordance with the provisions of Regulation 5 (Part 2 of the Regulations) as described at Table A. Only applications that meet these criteria can be accepted by the LPA. It is recommended that the decision whether to accept such an application should be reserved to the Cabinet Member for the reasons set out above.

Neighbourhood Forums (Part 3, Regulations 8-12)

30. Section 61F(5) TCPA1990 sets out the qualifying criteria for neighbourhood forums, namely a community group or organisation established with the express purpose of promoting the social, economic and environmental well-being of a particular neighbourhood area (a forum may also be constituted from trades, professions or other businesses in such an area).
 - A neighbourhood forum must have:
 - a membership of at least 21 members,
 - a written constitution
 - be open to people who live or work or are elected members in the area to which the neighbourhood development plan relates.
31. Only applications that accord with the statutory criteria can be accepted by the LPA. The LPA may only designate one forum for each neighbourhood area. It is recommended that the decision whether to accept such an application should be reserved to the Cabinet Member in consultation with Planning Committee and the relevant Community Councils.

Neighbourhood Development Plan(s)

32. The Localism Act 2011 empowers neighbourhood forums to propose neighbourhood development plans (Part 2, Schedule 9 amends Planning and Compulsory Purchase Act 2004). The latter do not provide planning permission but set out policies in relation to development and the use of land in a defined neighbourhood for a five year period. A new s38(A)(2) provides that once a

neighbourhood development plan is made it becomes part of the development plan for an area.

33. Neighbourhood development plans are not developed by the LPA but are required to be in general conformity with the council's Core Strategy, the London Plan and national planning policy. Plans cannot therefore be used to introduce controls in excess of the existing planning law and regulations. Local communities will be able to use neighbourhood planning to grant full or outline planning permission in areas where they most want to see new homes and businesses.
34. As set out in the Table A, if an NDP accords with planning policy, the strategic vision for the wider area set by the local authority, other legal requirements and considered acceptable by the appointed Independent Examiner (Regulation 17 and Paragraph 7, Schedule 4B 1990 Act and 38A 2004 Act), local people will be able to vote upon its adoption in a referendum.
35. Following consultation and independent examination, neighbourhood development plan will be made by the LPA if it receives more than 50% of the votes cast in a referendum. Any persons eligible to vote in local elections will be eligible to vote and there is no minimum threshold of voter turn out to validate a referendum. Regulations 16 and 19 set out the statutory requirements for the publicising of a proposed neighbourhood development plan (Section 38A (4) Planning and Compulsory Purchase Act 2004 Act) and the decision whether to make or refuse it. The referendum procedural arrangements are detailed in the Neighbourhood Planning (Referendum) Regulations 2012 (not yet in force).

Neighbourhood Development Order(s)

36. A neighbourhood development order sets out the type of development that can take place in a particular neighbourhood area without the need for a planning application but cannot deal with nationally significant infrastructure projects or development that present a conflict with European legislation. These Orders are subject to consultation, examination and a referendum prior to approval and are detailed in Part 6, Regulations 21-27 and Paragraphs 4-6 Schedule 4B TCPA 1990.
37. Paragraphs 8-11 of the report set out the extent of assistance that the LPA is required to provide. The Leader will note that the preparation, leadership and funding of the neighbourhood development plan resides with the neighbourhood forum. LPAs are required to provide 'technical advice and support' as neighbourhoods draw up their proposals.

Examination

38. Once the LPA is satisfied that a proposed neighbourhood development plan accords with the statutory criteria set out in the table at paragraph 13 of the report, it will be required to arrange for it to be reviewed by an independent examiner together with any representations received to ensure that it meets the criteria set out in the Regulations paragraph 4-6, Schedule 4B TCPA 1990. The LPA will be required to meet the cost of this submission, which will typically be carried out by way of written representations.
39. If the neighbourhood development plan does not meet the right standard, the examiner will issue a report either recommending that modifications be made

and the modified draft submitted to referendum, or that the proposal is refused. If the examiner considers that the proposal does not meet the required conditions or the statutory requirements it cannot be submitted to a referendum. (Paragraph 8, Schedule 4B details matters that the Examiner must consider in their examination).

40. The Local Planning Authority is required to consider the recommendations set out in the examiner's report and decide what action to take in respect of the amendments proposed. The LPA is required to publicise whatever decision is taken ((Regulation 25) and paragraph 12 of Schedule 4B TCPA 1990).

Referendums

41. If the neighbourhood development plan is found to be in conformity with the strategic needs and priorities of the local area by the examiner, the LPA will be required to arrange a referendum on the neighbourhood development plan or order at full cost. These arrangements are provided for by way of the Neighborhood Planning (Referendum) Regulations 2012, published in June 2012 (not yet in force).
42. If more than 50 per cent people voting in the referendum support the plan, the LPA must make the neighbourhood development plan or order. Section 38A (inserted by paragraph 7 of Schedule 9) requires the Local Planning Authority to make NDP or NDO if a referendum vote in favour is carried under Schedule 4B TCPA 1990. Once brought into force a neighbourhood development plan carries full legal weight and decision makers will be required to take it into account in making decisions on planning applications.
43. There are narrow circumstances in which the LPA may decline to make the plan or order, such as where it considers that making the order would breach any EU obligations or any Convention rights, or if following multiple referendums in a designated business area one referendum results in a 'Yes' vote and the other a 'No' vote. The recently published Regulations (June 12) do not provide for referendums where plans or orders relate to a designated business area. The Government will bring forward separate regulations that will make provision for an additional referendum that allows business to vote.
44. As this decision is prescribed by the Regulations and contains no discretion on the part of the decision maker, it is appropriate to delegate it to the Director of Planning, following consultation with the relevant local community council members and the Cabinet Member. If two referendums with two different results are produced (Decision 10) the Leader or relevant Cabinet Member would take the ultimate decision.

Equalities and Human Rights Implications

45. The Equality Act 2010 introduced a single public sector equality duty (PSED) which requires the Council to have due regard in our decision making processes to the need to eliminate discrimination, advance equality of opportunity and foster good relations between those who share or may not share protected characteristics.
46. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The

PSED also applies to marriage and civil partnership, but only in relation to (a) above.

47. A full equalities assessment has not been carried out at this stage which simply entails approval of internal decision making processes. These decisions are not expected at this stage impact on those with protected characteristics. However, as and when relevant decisions detailed in Table A are being taken, full consideration should be given to Equalities Impacts.

Human Rights

48. Neighbourhood planning processes could potentially engage certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term ‘engage’ simply means that human rights may be affected or relevant.
49. The approval of the decision making process set out in Table A should not cause unlawful interference with human rights. However due consideration should be given in making individual decisions as to the potential of neighbourhood plans or other proposals could engage the following rights (among others): -
- The right to a fair hearing (Article 6) – giving rise to the need to ensure proper consultation and effective engagement of the public in the process;
 - The right to respect for private and family life (Article 8) –the right to and impacts on amenities or the quality of life of individuals may be impacted by details in plans or proposals;
 - Article 1, Protocol 1 (Protection of Property) – this right prohibits interference with individuals’ right to peaceful enjoyment of existing and future property / homes;
 - Part II Protocol 1 Article 2 Right to Education.

Strategic Director of Finance and Corporate Services (SDFCS) (NR/FCS/22/8/12)

50. This report recommends that the Leader agrees the proposed decision making processes for neighbourhood planning.
51. The SDFCS notes the financial implications contained within the report. Officer time to effect the recommendation will be contained within the exiting budgeted revenue resources.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Localism Act	http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted	planpolall@southwark.gov.uk
The Neighbourhood Planning Regulations	http://www.legislation.gov.uk/uksi/2012/637/contents/made	planpolall@southwark.gov.uk

APPENDICES

No.	Title
None	

AUDIT TRAIL

Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Juliet Seymour, Planning Policy Manager	
Version	Final	
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Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Cabinet Member	Yes	No
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