

<b>Item No.</b> N/A.	<b>Classification:</b> Open	<b>Date:</b> 13 September 2016	<b>Decision Taker:</b> Cabinet Member for Regeneration and New Homes
<b>Report title:</b>		Neighbourhood Planning – Designation of a Neighbourhood Forum (Elephant and Walworth)	
<b>Ward(s) or groups affected:</b>		Newington, East Walworth and Faraday	
<b>From:</b>		Planning Policy Manager	

## RECOMMENDATION

That the Cabinet Member for Regeneration and New Homes:

1. Notes the consultation responses received (Appendix A) in respect of the application from the Elephant and Walworth Neighbourhood Forum “EWNF” to be designated as a Neighbourhood Forum for the Walworth Neighbourhood Area (Appendix B).
2. Agrees to designate the Elephant and Walworth Neighbourhood Forum as the appropriate Neighbourhood Forum for the Walworth Neighbourhood Area (Appendix B).

## BACKGROUND INFORMATION

3. The Localism Act 2011 (by amending the Town and Country Planning Act 1990) (“the Act”) introduced new provisions which empower parish councils and designated Neighbourhood Forums (“NFs”) to initiate the process for making Neighbourhood Development Orders (“NDOs”) and Neighbourhood Development Plans (“NDPs”) in relation to designated Neighbourhood Areas (“NAs”). The powers came into force on 6 April 2012 through the commencement of the Neighbourhood Planning (General) Regulations 2012 (“the Regulations”).
4. A NDP is a plan which sets out policies in relation to the development and use of land in the whole, or part of, a NA. It may contain a range of policies or proposals for land use development that will carry weight in the determination of planning applications. NDOs grant planning permission in relation to a particular NA for development specified in the Order or for a class of development specified in the Order. Both NDPs and NDOs must be in general conformity with the strategic policies in the development plan for the relevant area.

### Neighbourhood Plan preparation stages

5. Section 61F of the Act provides that a local planning authority may designate an organisation or body as a NF if the conditions in subsection (5) are satisfied. In deciding whether to designate an organisation/body, it must have regard to the matters set out in subsection (7).
6. Section 61G of the Act sets out the powers and duties of local planning authorities in relation to the designation of NAs. Sub-section (4) sets out a number of considerations which the local planning authority must have regard to

in determining an application for the designation of a specified area as a NA. The local planning authority is not obliged to designate the entire area specified in the application, but if it refuses to do so, it must give its reasons for that decision and must use its powers to secure that some or all of the specified area forms part of one of more designated NAs.

7. If a body or organisation is designated as a NF for a particular NA, it is authorised to act in relation to that area for the purposes of promoting an NDP/NDO.
8. Once a NA and NF have been designated, the NF may submit a proposal to the local planning authority for the making of a NDP or NDO, which will be submitted for independent examination. If, following that examination, the council is satisfied that the draft Plan/Order meets the requisite conditions, the council must hold (and pay for) a referendum on the making of the Plan/Order.
9. The area in which the referendum takes place must, as a minimum, be the NA to which the proposed Plan/Order relates. The independent examiner considering the proposal must also consider whether the area for any referendum should extend beyond the NA to which the draft Plan/Order relates.
10. If more than 50% of people voting in the referendum support the Plan or Order, then the local planning authority must bring it into force.
11. The EWNF submitted two neighbourhood planning applications to Southwark on 29 January 2014. The applications were to obtain legal status as a neighbourhood planning forum in accordance with section 61F and to legally designate their proposed neighbourhood area in accordance with section 61G. Following further discussion with the EWNF it was agreed that a revised boundary should be submitted for the NA.
12. The original boundary proposed in 2014 included 5 wards, part of the Elephant and Castle Opportunity Area and part of the Aylesbury Action Area. The area was considered to be too large, covering different types of areas which would not meet the NPPG criteria for designating a neighbourhood area. The Opportunity Area and Action Area already had detailed guidance prepared with proposals either permitted or coming forward. It had not been demonstrated the additional value a neighbourhood plan would provide to these adopted documents. In addition, the area included the centre of Elephant and Castle which contains many businesses, therefore a business area in this location would be more appropriate enabling businesses to have a vote. It was agreed the area should be reduced to cover residential parts of East Walworth, Faraday and Newington wards centring on Walworth Road to the south of the town centre. This provided a more contained area which excludes major permitted sites in the Opportunity and Action Areas and provides a focus for the future neighbourhood plan.
13. The council received a revised application on 14 December 2015 for the designation of a neighbourhood forum and neighbourhood area. Officers liaised with the EWNF following the submission to clarify elements of the application which enabled the applications to be validated and proceed to consultation stages. Consultation took place between 15 June 2016 and 27 July 2016.
14. The council decided that it is more appropriate to consider the applications for the designation of the area and the forum separately to ensure the neighbourhood forum is the most appropriate and representative forum for the

neighbourhood area. This is why two reports have been prepared; one in relation to the forum and another in relation to the area.

15. The NA proposed by the EWNF is shown on the map accompanying the area application (Appendix B). The proposed neighbourhood area is designed with the intention to create a “Walworth Neighbourhood Plan”.
16. Following consultation a further Individual Decision Maker (“IDM”) decision is required to consider the consultation responses and decide whether to designate the neighbourhood forum. This decision should take place within 13 weeks from the date the application is first publicised.

## **Consultation**

17. Regulation 9 of the Neighbourhood Planning (General) Regulations 2012 requires local planning authorities, as soon as possible after receiving an NF application, to publish details of the application and of how to make representations in respect of the application, on its website and in such other manner as they consider is likely to bring the application to the attention of people who live, work and carry on business in the area to which the application relates. The council’s Neighbourhood Planning Decision Making report of 6 March 2015 sets a period of at least 6 weeks (from the date on which the application was first publicised) to be allowed for the receipt of representations in relation to the application.
18. The applications were publicised on the council’s website and public consultation took place between 15 June 2016 and 27 July 2016. An online questionnaire was available on the council’s consultation hub. The Borough, Bankside and Community Council considered the applications on the meeting of 29 June 2016 and Planning Committee on 5 July 2016. Notification of the application and details of how to send representations was sent to all those on the planning policy email database and local Tenants and Residents Associations (TRAs).

## **Consultation responses**

19. The council received 42 representations in response to the consultation for the area and forum neighbourhood planning applications. 25 respondents supported the designation of the area and forum and 8 objected to the designation. Other representations included comments from statutory consultees relating to the progression of a neighbourhood plan at later stages of the plan process. The main reasons for objection were that the name of the forum is not representative of the area which is misleading and has the wrong identity. In addition a lack of consultation and awareness raised among key local groups was raised as an issue. The consultation responses are attached as Appendix A.
20. Officers and members of the EWNF introduced the consultation and presented at the Borough, Bankside and Walworth Community Council on 29 June 2016. The relevant extracts from the draft minutes are as follows:

### *Item 1.10: Neighbourhood Planning*

*In response to questions regarding the name of the forum the EWNF explained that:*

*'several local groups and estates had been involved in the process over the last four years. There was support from people and groups from a much wider area to develop neighbourhood plans. However, the advice received, including from the cabinet member for regeneration and new homes, had been that the starting point should be a smaller area. That was why the group was focused initially on a Walworth neighbourhood plan'*

#### Item 2.3: Public Question Time

*'A member of the EWNF asked for the councillors' views on the application for designation of the area. The chair responded that she was a member of the neighbourhood forum and was positive and supportive of it and that there were some exciting ideas for the Walworth Road. Several councillors supported the proposals and thanked those involved for their work.'*

### **KEY ISSUES FOR CONSIDERATION**

#### **Submission documentation**

21. Regulation 8 of the Neighbourhood Planning (General) Regulations 2012 contains a number of requirements in respect of the application, which the Council considers have been satisfied in the present case. The application must include:
  - a) The name of the proposed neighbourhood forum
  - b) A copy of the written constitution of the proposed neighbourhood forum
  - c) The name of the neighbourhood area to which the application relates and a map which identifies the area
  - d) The contact details of at least one member of the proposed neighbourhood forum
  - e) A statement which explains how the proposed neighbourhood forum meets the conditions contained in section 61F (5) of the 1990 Act.
22. The EWNF submitted the following information to accompany the neighbourhood forum application:
  - A map identifying the Walworth Neighbourhood Area (Appendix B)
  - The written constitution of the EWNF (Appendix C)
  - Application form which includes the statements explaining how the proposed forum meets the conditions contained in section 61F(5) and the name of the proposed forum (Appendix D)
  - Appendices and reports on consultation and meetings to accompany the application
  - A list of 21 members of the forum
  - The contact details of one member of the forum to be made public.

23. The relevant contact details to be made public are the position of Secretary of the EWNF which is shared between Sofia Roupakia (sofia.roupakia@gmail.com) and Enrico Costanza (e.costanza@ieee.org). The EWNF website is also available at <http://ewnf.herokuapp.com>.

#### **The requirements of section 61F**

24. Section 61F(5) of the Act provides that local authorities may designate an organisation or body as a Neighbourhood Forum if the following conditions are satisfied:
- a) It is established for the express purpose of promoting or improving the social, economic and environmental wellbeing of an area that consists of or includes the neighbourhood area concerned
  - b) Its membership is open to individuals who live or work in the Neighbourhood Area or are elected members of the a London borough council any of whose area falls in the Neighbourhood Area concerned
  - c) Its membership includes a minimum of 21 individuals, each of whom live or work in the Neighbourhood Area or are elected members of the a London borough council any of whose area falls in the Neighbourhood Area concerned
  - d) It has a written constitution.
25. Section 61F(7) provides that in determining whether to designate an organisation/body under subsection (5), the local planning authority must have regard to the desirability of designating an organisation or body:
- i. Which has secured (or taken reasonable steps to attempt to secure) that its membership includes at least one individual falling within each of subparagraphs (i) to (iii) of subsection (5)(b) (i.e. a person who lives in the area, a person who works in the area and a person who has been elected in respect of the area)
  - ii. Whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area
  - iii. Whose purpose reflects (in general terms) the character of that area.
26. Where the local planning authority refuses to designate an organisation as a Neighbourhood Forum, it must give reasons for its decision (section 61F (7)(d)).
27. The Neighbourhood Forum needs to be comprised of a minimum of 21 members. The group must make every possible effort to include a resident, a business and a ward member. The EWNF core membership consists of 21 members made up of people who live and/or work in the area and 2 local councillors. The contact details have been provided to the Council and the 21 members are confirmed to reside, work or represent the area. Membership is open to everyone who lives, works or represents the electorate within the Neighbourhood Area as confirmed by the EWNF constitution.

28. The EWNF has 92 members in total; however the number of members within the neighbourhood planning area is 66. The council must consider whether the purpose of the neighbourhood forum reflects (in general terms) the character of that area. Taking into account the consultation responses received, there is concern that the name of the forum does not accurately represent the neighbourhood area proposed. This has caused some confusion relating to the identity and purpose of the neighbourhood forum. The EWNF propose to represent and produce a 'Walworth Neighbourhood Plan' however the name of the forum is not consistent with the identity of Walworth and the name would appear to encompass the wider area of Elephant and Castle. This is further exacerbated as some 26 members of forum reside outside of the neighbourhood planning area.
29. It is considered that the neighbourhood forum should be more appropriately linked to the Walworth neighbourhood planning area proposed. However the EWNF have been established for a number of years and the council has considered the EWNF to constitute a 'relevant body' capable of being designated as a neighbourhood forum (Section 61G (2)(b) of the Act) for the purposes of applying to designate a neighbourhood area. The EWNF has worked with the council to agree a more focused neighbourhood area for designation (see paragraph 12 above).
30. The council has also considered whether the purpose of membership outside of the area reflects the character of the Walworth neighbourhood planning area proposed. The regulations are ambiguous with regard to whether the NF may go beyond the NA, or whether members are permitted to be drawn from outside of the NA. However, the council is satisfied that the NF appears to be sufficiently representative of the NA proposed as the majority of members live, work or represent the NA proposed. It is considered that whilst some members live outside of the NA proposed; this would not preclude other neighbourhood forums forming in areas adjoining the proposed NA as long as there is no overlapping of neighbourhood areas.
31. The council therefore recommends approval of the designation of the EWNF as the NF to promote the interests of the Walworth Neighbourhood Area. This recommendation is based on the premise that the EWNF in its present form reflects the character and aspirations of the proposed Walworth neighbourhood area. The council's decision whether to designate the Walworth neighbourhood area is subject to a separate report.
32. It is considered that there are now opportunities for the EWNF to freshly engage further with focus groups and stakeholders within the neighbourhood area in order to develop a neighbourhood plan for Walworth.
33. In accordance with Section 61F (8)(a) of the Act the length of the designation is 5 years from the date of decision.

### **Decision-making**

34. The council's Neighbourhood Planning Decision Making report of 6 March September 2015 outlines at paragraph 16 the decision making process. The report is contained at Appendix E of this report. Decision two requires the Cabinet Member to sign off the final IDM report and to decide whether to designate the forum. In accordance with Regulation 10 of the Neighbourhood Planning (General) Regulations 2012, as soon as possible after designating the

neighbourhood forum, the local planning authority must publish the forum and neighbourhood area details 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. Notification of the designation will be sent to the planning policy email database and publicised on the council's website.

### **Equalities/human rights**

35. The Equality Act 2010 introduced the public sector equality duty, which merged existing race, sex and disability equality duties and extended them to include other protected characteristics; namely age, gender reassignment, pregnancy and maternity, religion and belief and sex and sexual orientation, including marriage and civil partnership. In summary those subject to the equality duty, which includes the council, must in the exercise of their functions: (i) have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; and (ii) foster good relations between people who share a protected characteristic and those who do not.
36. The neighbourhood planning process is intended to be accessible. The designation shall be publicised on the council's website and via email to all those on the planning policy email database.
37. The Human Rights Act 1998 imposed a duty on the council as a public authority to apply the European Convention on Human Rights; as a result the council must not act in a way which is incompatible with these rights. The designation that this report will permit is not considered to be contrary to the Act.

### **Financial implications**

38. There will be some financial implications in terms of internal resourcing for supporting neighbourhood planning and the handling of applications. Later stages of the neighbourhood planning process, including the determination of a neighbourhood plan will include a local referendum. However the council is eligible to claim for central Government grant funding up to a total cost of £30,000 per scheme.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

39. The recommendation for this report is that the Cabinet Member for Regeneration and New Homes:
  1. Notes the consultation responses received (Appendix A) in respect of the application from the Elephant and Walworth Neighbourhood Forum "EWNF" to be designated as a Neighbourhood Forum for the Walworth Neighbourhood Area (Appendix B).
  2. Agrees to designate the Elephant and Walworth Neighbourhood Forum as the appropriate Neighbourhood Forum for the Walworth Neighbourhood Area (Appendix B).
40. Paragraphs 5 -16 of this report set out the Neighbourhood Plan preparation stages. The EWNF submitted two applications on 29 January 2014 (one to

obtain legal status as a forum and the other to designate their proposed neighbourhood area) and these applications raised concerns over the proposed boundary as set out in paragraph 12 of the report.

41. The Council received a revised application for the designation of the Neighbourhood area and Neighbourhood forum on 14 December 2015 and the Council's officers worked with the EWNF to clarify elements of the application which enabled the application to be validated and proceed to consultation stages.
42. Paragraphs 17 – 20 of this report set out the public consultation undertaken by the Council in respect of the proposal to designate the EWNF as a Neighbourhood Forum. This was undertaken for a period of six weeks between 15 June 2016 and 27 July 2016 pursuant to Regulation 9 of the Neighbourhood Planning (General) Regulations 2012 and in accordance with the Council's Neighbourhood Planning Decision Making Report which was approved by the Cabinet Member for Regeneration, Planning and Transport on 18 March 2015.
43. This report advises that officers have fully considered the information submitted as part of the application documentation and the consultation responses received in respect of the EWNF against the statutory criteria set out in sub sections 61F(5) and 61F (7) of the 1990 Act.
44. The Cabinet Member will note from paragraph 25 of this report, that the application has satisfied sub-sections 61F(7) (i) and (iii) of the Act, concerning the requirement to demonstrate the steps taken by the EWNF to ensure that its membership includes a member within each of the categories set out in sub-paragraphs 61F(5) (b) (i) – (iii) and that their purpose reflects (in general terms) the character of the area (s61F(7)(a)(iii)).
45. However, the Cabinet Member will note at paragraph 28 of this report that following consultation, concerns were raised that the name of the neighbourhood forum did not accurately represent the neighbourhood area proposed and the forum was not consistent with the identity of Walworth, and that the name would appear to encompass the wider area of Elephant and Castle.
46. However, the Cabinet Member will also note that the Council is satisfied that the EWNF constitutes a "relevant body" capable of being designated as a neighbourhood forum for the purposes of applying to designate a neighbourhood area, pursuant to section 61G (2)(b) of the 1990 Act. The EWNF has worked with the Council to agree a more focused neighbourhood area for designation and whilst some members live outside of the NA proposed; this would not preclude other neighbourhood forums forming in adjoining areas of the proposed NA as long as there is no overlapping of neighbourhood areas.
47. Further, the Cabinet Member will note, that the Equality Act 2010 introduced a single public sector equality duty (PSED) which requires the Council to have due regard in its 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.
48. 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.



49. A full equalities assessment has not been carried out at this stage which simply entails approval of internal decision making processes. This decision is not expected to impact on those with protected characteristics. However, the Council will support the preparation of an equalities assessment when it becomes necessary at the Neighbourhood Plan making stage and full consideration will be given to Equalities Impacts.
50. 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.
51. The designation of the Elephant and Walworth Neighbourhood Forum for the Walworth Neighbourhood Area 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):
- (i) 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
  - (ii) 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
  - (iii) Article 1, Protocol 1 (Protection of Property) – this right prohibits interference with individuals' right to peaceful enjoyment of existing and future property / homes
  - (iv) Part II Protocol 1 Article 2 Right to Education.

**Director of Finance and Governance (CE16/020)**

52. This report is requesting the cabinet member for Regeneration and New Homes to note the consultation responses received (Appendix A) in respect of the application from the Elephant and Walworth Neighbourhood Forum "EWNF" to be designated as a Neighbourhood Forum for the Walworth Neighbourhood Area (Appendix B) and to agree to designate the Elephant and Walworth Neighbourhood Forum as the appropriate Neighbourhood Forum for the Walworth Neighbourhood Area (Appendix B). Full details are provided within the main body of the report.
53. The strategic director of finance and governance notes that there are no financial implications arising from this report as all staffing and related costs are expected to be contained within existing departmental revenue budgets and the grant funding expected as reflected in the financial implications.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Localism Act	<a href="http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted">http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted</a>	Laura Hills 020 725 0043
The Neighbourhood Planning Regulations	<a href="http://www.legislation.gov.uk/uksi/2012/637/contents/made">http://www.legislation.gov.uk/uksi/2012/637/contents/made</a>	Laura Hills 020 725 0043

## APPENDICES

No.	Title
Appendix A	Consultation responses
Appendix B	The Walworth Neighbourhood Area Map
Appendix C	EWNF Written Constitution
Appendix D	The EWNF Neighbourhood Forum application
Appendix E	Council's Neighbourhood Planning Decision Making report of 6 March 2015. Also available online at: <a href="http://moderngov.southwark.gov.uk/documents/s52596/Report.pdf">http://moderngov.southwark.gov.uk/documents/s52596/Report.pdf</a>

## AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning		
Report Author	Laura Hills, Senior Planning Policy Officer		
Version	Final		
Dated	13 September 2016		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments sought	Comments included	
Director of Legal Services	Yes	Yes	
Director of Finance and Governance	Yes	Yes	
Cabinet Member	Yes	No	
Date final report sent to Constitutional Team		12 September 2016	