

Item No. N/a	Classification: Open	Date: 24 November 2017	Decision Taker: Cabinet Member for Regeneration and New Homes
Report title:		Neighbourhood Planning – Application for a Neighbourhood Area for Herne Hill	
Ward(s) or groups affected:		South Camberwell, Village	
From:		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 Herne Hill Forum (HHF) to designate the applied-for portion of the Neighbourhood Area proposed for Herne Hill (see appendix C) as it applies to LB Southwark.
2. Declines to designate the area applied for (appendix C and specifically the areas shown edged red on the map in Appendix D), proposed by the HHF as a Neighbourhood Area, for the reasons set out in paragraphs 35-40 of this report;
3. Agrees to designate the area as it applies to LB Southwark shown edged in purple on the map in Appendix E (referred to in this report as the Revised Area) as the appropriate Neighbourhood Area, for the reasons set out in paragraphs 42.

BACKGROUND INFORMATION

4. 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 (“NF’s”) to initiate the process for making Neighbourhood Development Orders (“NDO’s”) and Neighbourhood Development Plans (“NDP’s”) in relation to designated Neighbourhood Areas (“NA’s”). The powers came into force on 6 April 2012 through the commencement of the Neighbourhood Planning (General) Regulations 2012 (“the Regulations”).
5. 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. NDO’s 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 NDP’s and NDO’s must be in general conformity with the strategic policies in the development plan for the relevant area.

Neighbourhood Plan preparation stages

6. Section 61F of the Act provides that a local planning authority may designate an organisation or body as a NF if they are satisfied that it meets 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).
7. Section 61G of the Act sets out the powers and duties of local planning authorities in relation to the designation of NA's. 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 NA's.
8. Section 61I of the Act makes provision for NAs in two or more local planning authority areas.
9. 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.
10. 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.
11. 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. The Neighbourhood Planning Act 2017 has imposed a requirement on local authorities to 'have regard' to a post examination draft neighbourhood development plan, in so far as it is material to the application.
12. 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.
13. The HHF submitted an application form to both LB Lambeth and LB Southwark due to proposed neighbourhood area covering parts of both boroughs. By virtue of this, the proposed neighbourhood forum membership is comprised of individuals each of whom either live, work or are an elected ward member who represents a part of the proposed neighbourhood area.
14. Following receipt of an application for either a neighbourhood area, neighbourhood forum or both, the designating authorities must both be satisfied that the application is valid according to the requirements set out in subsections 61F(5) of the Town and Country Planning Act 1990 and the Neighbourhood Planning (General) Regulations 2012. Once determined to be valid, the application and related supporting documents must then be publicised for consultation for a minimum of 6 weeks to provide the public with an opportunity to comment prior to the council taking a decision to designate. As the proposed

neighbourhood area is situated in more than one local authority area, the designating authorities have 20 weeks in which to make their decision from the date of initial publication.

15. An application to obtain legal status as a neighbourhood planning forum in accordance with section 61F and to legally designate a proposed neighbourhood area in accordance with section 61G were received by the council on Monday 19 June 2017. The council examined the application form and related documents to ensure the application was valid. This necessitated discussion with both LB Lambeth and HHF to establish the requirements and requests were made for further information. In response HHF submitted the required information and the application was subsequently found valid.
16. The neighbourhood area proposed by the HHF is shown on the map accompanying the application (Appendix C). The proposed neighbourhood area is designed with the intention to create a "Herne Hill Neighbourhood Plan". The area covers land within the LB Lambeth to the west of the borough boundary.
17. Areas designated as Neighbourhood Areas must not overlap with each other (s.61G(7)).
18. The council may, in determining an application for a NA, modify designations already made (s.61G(6)), but it must have regard to the desirability of maintaining the existing boundaries of areas already designated as NA's (s.61G(4)(b)).

Consultation

19. Regulation 6 of the Neighbourhood Planning (General) Regulations 2012 (as amended) requires local planning authorities, as soon as possible after receiving a NA 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. A period of at least 6 weeks (from the date on which the application was first publicised) must be allowed for the receipt of representations in relation to the application.
20. The applications were publicised on the council's website and public consultation took place between 31 July 2017 and 11 September 2017. An online questionnaire was available on the council's consultation hub. The council's Neighbourhood Planning Decision Making Report (dated 6 March 2015) sets out that the relevant community council's are required to be notified and announcements made at the community council meetings as part of consultation. The LB Southwark portion of the proposed neighbourhood area covered wards in two community council areas – Dulwich (Village ward) and Camberwell (South Camberwell ward). Officers took part in a presentation and Q&A with the acting chair of the HHF and the meeting attendees at the Dulwich community council meeting on 9 September 2017. There was no Camberwell community council meeting scheduled during the 6 week consultation period on the application, and so an announcement/notification at a Camberwell community council meeting was not made. Similarly, the Dulwich community council meeting was scheduled only 3 days prior to the close of the consultation. To offset this, a tailored supplementary email was sent to relevant Dulwich and Camberwell community council contacts at the beginning of the consultation period. The email was

circulated with the aim of raising awareness of the application, to ensure the information about the application and consultation was passed on to any contact lists/individuals that may be interested in the application, encouraging recipients of the email to look at the application documents and provide a consultation response. This email was circulated to the council's internal community engagement leads for the two community council areas, community council chairs and vice chairs and the three ward councillors of each ward. The council also circulated a notification email to the council's planning policy consultation notification email mailing list, statutory consultees, the Mayor of London, London boroughs and TRAs in the borough. Other standard consultation procedures were undertaken including hard copies of the application documents being placed in local libraries (Camberwell, Grove Vale and Dulwich libraries), web updates and a press advertisement in Southwark News published on the 3rd August 2017.

Consultation Responses

21. The council received a total of 58 responses across the 6 week consultation period, split as follows:
 - 1 response by post
 - 27 responses by email
 - 38 responses online via the council's consultation hub
22. The majority of the responses received were relevant to an area in the LB Lambeth. Further to this, some of these responses were submitted by the same respondent, once via email and another time via the council's consultation hub. These responses have been recorded in Appendix F and have been passed to LB Lambeth for consideration in their decision making on their portion of the neighbourhood area application. In addition to this, LB Lambeth passed two consultation responses received which addressed issues relating to the Southwark portion of the neighbourhood area which had not been submitted to Southwark directly. These responses have been incorporated into the representation breakdown and summary collated in Appendix A. These responses, which were considered relevant and informed the recommendation, put forward in this report, amounted to 15 responses in total.

KEY ISSUES FOR CONSIDERATION

The requirements of section 61G

23. A local planning authority may only consider an application for designation as a NA if the application has been made by an organisation or body which is, or is capable of being, designated as a NF in respect of the area specified in the application.
24. The council considers that the HHF is capable of being designated as a NF and therefore the requirements of section 61F (5) of the 1990 Act are satisfied.

25. Regulation 5 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) A map which identifies the area to which the area application relates;
 - b) A statement explaining why this area is considered appropriate to be designated as a neighbourhood area;
 - c) A statement that the organisation or body making the area application is a relevant body for the purposes of section 61G of the 1990 Act.
26. The application for designation is appended to this report in Appendix B. It is accompanied by a map which identifies the area to which the application relates (see Appendix C) and a statement explaining why that area is considered to be appropriate to be designated as a NA. The application is also accompanied by a statement from the HHF explaining that it constitutes a 'relevant body' (i.e. one that is or is capable of being designated as a Neighbourhood Forum) (Appendix C). As such, the council considers that the requirements of Regulation 5 of the Regulations have been satisfied in relation to this application.

Consultation responses

27. Of the 15 responses received, 6 were considered to be neither definitively supportive nor objecting to the proposed area boundaries, but in instances raised potential concerns. One of these responses wanted to understand the rationale behind including the Velodrome while excluding the adjoining properties fronting Burbage Road. Historic England also submitted a response which urged careful consideration of conservation area boundaries in informing neighborhood areas, referencing the Dulwich conservation area boundary which abuts the railway line to the north of, and encompasses the Velodrome and the properties fronting Burbage Road.
28. 4 of the representations received were explicitly supportive of the proposed neighborhood area boundary; however none of these elaborated as to why.
29. The remaining 5 responses objected to the proposed boundary. 3 of these questioned the rationale of the inclusion of the Velodrome while 2 questioned the appropriateness of the north eastern portion of the proposed area towards Denmark Hill.

Justification on the inclusion of the areas identified above by the HHF in their Neighbourhood Area application

30. Consultation responses received questioned the inclusion of the Herne Hill Velodrome and surrounding properties of Burbage Road as well as the north eastern corner around the Denmark Hill Estate as being suitable for a Herne Hill neighbourhood area. The HHF referenced these or close by areas explicitly in their application which demonstrates they have considered and sought to justify their inclusion:

With regard to the Velodrome, HHF state:

31. *With regard to specific sites or areas which might still be an issue with our neighbours, we feel the Velodrome should be included in Herne Hill, not*

just because of its name and its iconic status as a Herne Hill asset but also because its inclusion will fit in well with what we expect to be one of the key aims of our plan, namely to encourage cycling and community engagement. The Velodrome trust has indicated that they wish to be in the Herne Hill NP area. (Page 10 of application form)

While with regard to the adjoining properties on Burbage Road the Forum state:

32. *As far as Southwark is concerned, we have discussed boundary issues with the Dulwich Society and other groups in the Dulwich area and taken advice from officers about inclusion of the Champion Hill estate and believe the proposed boundary is now robust on the basis of gathered evidence. Burbage and Turney Rd. RA carried out additional survey work (Apr. 17) which we have accepted as justification for not including a section of Burbage Rd. in the Plan. (Page 9 of application form)*
33. The reference to the Champion Hill Estate above is assumed to refer to the Denmark Hill Estate, which the applied-for neighbourhood area abuts at the roads of Nairn Grove, Woodfares and Dylways. The Chamption Hill Estate is at it's closest point 170m away from the Denmark Hill Estate and the neighbourhood area boundary, with the Cleave Hill Estate in between, of which the application makes no mention.
34. The forum included survey responses to questionnaire about where people felt they lived (see Appendix 3 of the application documents set out in Appendix B), identified by postcode and area. The results show that the residential streets to which the two areas in question relate to (i.e. Burbage Road to the south and Woodfares, Dylways and Nairne Grove to the north) responded with an answer of somewhere other than Herne Hill (denoted by the orange pin in the survey responses).

Proposed amendments

35. Taking into account the consultation responses received noted above, careful consideration of the rationale set out in the HHF's application documents and the characteristics of the parts of the areas identified through consultation, it is recommended that a revised boundary for the portion of area within Southwark is designated as a more appropriate neighbourhood area.
36. The proposed amendments to the applied-for boundary comprise the following:
37. **Northern portion:** Removal of Bessemer Grande Primary School and Stage Coach Performing Arts School Dulwich centered on parts of the roads of Dylways, Woodfares, Nairn Grove and the footpath boundary of Green Dale playing fields.
38. Rationale: This is proposed to be removed due to the strong association of these streets and premises with Denmark Hill, including the Denmark Hill Estate, and the wider Camberwell area rather than Herne Hill. The amended boundary would instead run in a straight line to the west along the rear of the properties of Sunray Avenue, congruent with the Sunray Gardens conservation area boundary, which is within both the applied-for and proposed revised neighbourhood area boundary.

39. **Southern portion:** Removal of the Herne Hill Velodrome.
40. Rationale: The majority of the southern boundary for the applied-for area follows the railway along the Southern line hosting nearby East Dulwich and North Dulwich Stations. The exception to this is where the boundary reaches south over the railway around the majority of the land which hosts the velodrome. However, the applied-for area does not include the access path to the velodrome to the south towards the Turney Road- (Dulwich-) end of Burbage Road, nor the houses immediately adjacent to the facility, to the west fronting Burbage Road. The velodrome is inaccessible from the neighbourhood area and is physically cut off by the railway. Furthermore, the Dulwich Village conservation area boundary includes said properties on Burbage Road and the Velodrome and whose northern boundary is the railway. Therefore the railway line, which the amended boundary is proposed to follow, is considered a more appropriate, natural southern boundary to the neighbourhood area.
41. The proposed revised neighbourhood area boundary, reflecting the amendments set out above in paras 37 – 40, is shown on the map in Appendices D and E. Neither of the proposed amendments affects forum membership and relate to entirely non-residential properties and/or facilities.
42. The remainder of the applied-for neighbourhood area within the Southwark portion is considered to have a consistent character or is comprised of multiple pockets of consistent character which has been assessed as being appropriate for the purposes of neighbourhood planning in the Herne Hill area. It is for this reason that it is recommended that the Cabinet Member for Regeneration and New Homes designate the Revised Area boundary as it applies to LB Southwark as the Herne Hill Neighbourhood Area as set out on the map in Appendix E.

Decision for London Borough of Lambeth

43. The Herne Hill Forum submitted an application for designation of the neighbourhood area to both Southwark and the London Borough of Lambeth to consider due to the applied-for area covering parts of both boroughs. In order for the area to become designated, both boroughs as the designating authorities are required to make a decision on the application and designate an area considered appropriate for the purposes of neighbourhood planning for the Herne Hill area. This report considers the application for the designation of a neighbourhood area for the Herne Hill area of London as it applies to (or falls within) the LB Southwark.
44. Decisions for neighbourhood areas are taken at cabinet level at LB Lambeth. LB Lambeth's decision on the area as it applies to their borough is due to be taken at the Monday the 11 December 2017 cabinet meeting. Therefore the formal 'implementable' designation of the Herne Hill neighbourhood area is still subject to the LB Lambeth decision, of which the Cabinet Member for Regeneration and New Homes will be kept informed.

Equalities/Human Rights

45. 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.

46. 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.
47. 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

48. 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.
49. The Department for Communities and Local Government has a grant scheme to help resource planning departments supporting neighbourhood planning. The CLG scheme includes:
 - **Examination and Referendum date:** LPAs can claim £20,000 once they have set a date for a referendum following a successful examination.
 - **Area designation:** LPAs can claim £5,000 for the first five neighbourhood areas designated only.
 - **Forum designation:** LPAs can claim £5,000 for the first five neighbourhood forums they designate only.
50. The neighbourhood area designation would be the 6th neighbourhood area designated in the borough and therefore the council would not be eligible to claim for the £5,000 offered for the first 5 neighbourhood area designations.
51. Therefore financial support available from the DCLG will be £5,000 less than that previously available for the council to claim in order to support resource demands that neighbourhood planning activities place on the council under its "duty to support."
52. Staff related costs and any other costs connected with this recommendation will be contained within the grant funding available and within existing departmental revenue budgets.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

53. This report relates to an application from the Herne Hill Forum made under the Localism Act 2011 and requests the Cabinet Member for Regeneration and New Homes to note the consultation responses received; decline to approve part of the Neighbourhood area applied for; and agree to designate a revised area as shown in Appendix E

54. Paragraphs 19 - 20 of the report set out the public consultation undertaken by the Council in respect of the proposal to designate the Neighbourhood Area. This was undertaken for a period of six weeks between 31 July 2017 and 11 September 2017 pursuant to Regulation 6 of the Neighbourhood Planning (General) Regulations 2012 and pursuant to the Council's Neighbourhood Planning Decision Making Report approved by the Cabinet Member for Regeneration, Planning and Transport on 6 March 2015.
55. This report advises at paragraphs 27 – 34 that officers have fully considered the information submitted as part of the application documentation and the consultation responses received in respect of the neighbourhood area as applied for against the statutory criteria set out in section 61G of the 1990 Act and Regulation 5 of the Neighbourhood Planning (General) Regulations 2012.
56. The Council has carefully considered whether the Neighbourhood Areas proposed by Herne Hill Forum (HHF) is consistent, coherent and appropriate for neighbourhood planning and is of the view that it is not. However, the Council does not consider the application for the proposed Neighbourhood Area submitted by the HHF on the map in Appendix B to be appropriate for the reasons set out in paragraphs 35 - 40 of the report.
57. Section 61G of the Act provides that a local planning authority is not obliged to designate the entire area specified in an application for a Neighbourhood Area. However, if a local authority refuses an application reasons for the decision must be given. Further, subsection 61G(5) provides that:
“If –
(a) a valid application is made to the authority,
(b) some or all of the specified area has not been designated as a neighbourhood area, and
(c) the authority refuse the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area, the authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas.”
58. As advised through paragraph 35-40 of the report, the Council has carefully considered which area or parts of the areas proposed to be designated as Neighbourhood Area constitute a single coherent neighbourhood and would be appropriate for the designation as a Neighbourhood Area. Following the consideration of this matter, it has identified an appropriate area for designation, being the Revised Area (shown outlined in purple on the map in Appendix D and E).
59. The Cabinet Member is advised that, although the proposed Revised Area is different from the Neighbourhood Areas proposed by the HHF, it does contain the majority of the areas identified in the original applications and therefore satisfies the requirement of section 61G(5) of the Act.
60. The Council's proposed Neighbourhood Area, the Revised Area, represents a new Neighbourhood Area that differs from the Neighbourhood Area proposed by the HHF. The recommendation, therefore, seeks the refusal of the HHF application for designation of a Neighbourhood Area.

61. As with all Council decisions, it is imperative to consider the public sector equality duty introduced by the Equality Act 2010. This duty 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.
62. 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.
63. The designation of the 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;

Strategic Director of Finance and Governance

64. This report is seeking approval from the cabinet member for regeneration and new homes to note the consultation responses received (Appendix A) in respect of the application from the Herne Hill Forum (HHF) to designate the applied-for portion of the Neighbourhood Area proposed for Herne Hill (see appendix C) as it applies to LB Southwark, as detailed in the report.
65. This report is also seeking approval from the cabinet member for regeneration and new homes to decline to designate the area applied for (appendix C and specifically the areas shown edged red on the map in Appendix D), proposed by the HHF as a Neighbourhood Area, for the reasons set out in paragraphs 35-40 of this report
66. This report is also seeking approval from the cabinet member for regeneration and new homes to agree to designate the area shown edged in purple on the map in Appendix E (referred to in this report as the revised area) as the appropriate Neighbourhood Area, for the reasons set out in paragraphs 42.
67. The strategic director of finance and governance notes the financial implication that all staff related costs and any other costs connected with this recommendation will be contained within the grant funding available and within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Localism Act	http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted	Tom Weaver 0207 525 3841
The Neighbourhood Planning Regulations	http://www.legislation.gov.uk/uksi/2012/637/contents/made	Tom Weaver 0207 525 3841

APPENDICES

No.	Title
Appendix A	Consultation responses to Herne Hill Forum Neighbourhood Area Application
Appendix B	Herne Hill Neighbourhood Planning Application & Appendices
Appendix C	Applied-for Neighbourhood Area Map with LB Southwark boundary
Appendix D	Proposed amended neighbourhood area boundary (LB Southwark portion only) with amendments identified
Appendix E	Proposed revised boundary (LB Southwark portion only)
Appendix F	Consultation responses received by LB Southwark relevant to LB Lambeth

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning	
Report Author	Tom Weaver, Graduate Planner	
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Dated	24 November 2017	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		24 November 2017