

Cabinet Member Delegated Decision 18 October 2018

Report title: South Bank and Waterloo Neighbours Draft Neighbourhood Plan Submission

Wards: Bishop's

Report Authorised by: Sue Foster, Strategic Director Neighbourhoods and Growth

Portfolio: Councillor Matthew Bennett, Cabinet Member Planning, Investment and New Homes

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Report summary

The draft South Bank and Waterloo Neighbours Neighbourhood Plan has been submitted to the Council by the Southbank and Waterloo Neighbours neighbourhood forum. The local planning authority is required, by the Town and Country Planning Act 1990, to make a decision whether the submitted documents meet the relevant statutory requirements.

The submitted documents have been assessed against the relevant statutory requirements, which derive from the Town and Country Planning Act 1990, the Planning and Compulsory Purchase Act 2004, and the Neighbourhood Planning (General) Regulations 2012. This assessment has concluded that, on balance, the draft neighbourhood plan should proceed to being formally published by the Council and being submitted to examination under Regulations 16 and 17 of the Neighbourhood Planning (General) Regulations 2012.

Finance summary

There is no cost in arriving at the decision whether the submitted draft neighbourhood plan should proceed to formal publication and examination. The cost of officer time in making the necessary assessment has been absorbed within existing budgets.

Recommendations

- (1) To agree that the submitted draft South Bank and Waterloo Neighbours neighbourhood plan can proceed to formal publication and be submitted to examination under Regulations 16 and 17 of the Neighbourhood Planning (General) Regulations 2012.
- (2) To note the process for assessment of the submitted draft neighbourhood plan to be undertaken in due course by an appointed examiner and the scope for the Council as local planning authority to make representations to the examiner about any recommended modification of the draft neighbourhood development plan.
- (3) To delegate to officers the giving of notification to the Southbank and Waterloo Neighbours neighbourhood forum of the decision and the carrying out of the processes of formal publication and

submission to examination, including preparing in consultation with the Cabinet Member representations on behalf of the Council about the submitted version of the draft neighbourhood plan, notifying relevant consultation bodies of receipt of the draft neighbourhood plan and the making of arrangements for the holding of an examination.

1. Context

- 1.1. The Localism Act 2011 introduced the opportunity for local communities to produce Neighbourhood Development Plans (NDPs), Neighbourhood Development Orders and Community Right to Build Orders. NDPs allow communities to shape development and growth in their local areas and form part of the statutory development plan for the local planning authority once 'made', that is, once a draft neighbourhood plan reaches the point of coming in to legal force. In summary, in order for a draft NDP to come in to legal force, the draft plan needs to have passed successfully through an independent examination process, enough people need to have voted in favour of it at a referendum, and there needs to be no legal reason requiring the local planning authority to decline to bring the draft plan into effect at that final stage.
- 1.2. The first stage of preparing a NDP is the designation of a neighbourhood forum and a neighbourhood area. Once a neighbourhood forum has been designated by the local planning authority, they can prepare a draft NDP for the designated neighbourhood area. The neighbourhood forum must arrange for the draft NDP to undergo consultation for a period of at least 6 weeks. Following this, the neighbourhood forum must formally submit the draft NDP to the local planning authority. The local planning authority must make a decision whether it complies with the relevant statutory requirements before the draft plan can progress to the next stages, which involve the draft plan being made available for public comments (which is referred to as 'publicising' or 'publication') and being submitted to examination (which is an assessment of the draft plan that is conducted by an independent examiner)..
- 1.3. A draft South Bank and Waterloo Neighbours Neighbourhood Plan has been formally submitted to the Council by the South Bank and Waterloo Neighbours (SoWN) neighbourhood forum. A decision is required whether the submitted draft NDP should proceed to publication and submission to examination.
- 1.4. The SoWN neighbourhood area straddles the boundary of Lambeth and Southwark. A decision whether the draft NDP may proceed to publication and submission to examination must be made separately by each local planning authority.

2. Proposal and Reasons

Overview of the history of production of the draft SoWN NDP

- 2.1. The SoWN neighbourhood forum and neighbourhood area were designated by the Council on 10 February 2014.
- 2.2. Local planning authorities are required by paragraph 3 of Schedule 4B to the Town and Country Planning Act 1990 ('the 1990 Act') to give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for NDPs in their area (as explained further below, although the legislation as set out in Schedule 4B of the 1990 Act is expressed to apply to neighbourhood development orders, other legislation applies the provisions of Schedule 4B also to the preparation of neighbourhood development plans). 'Qualifying bodies' for these purposes include designated neighbourhood forums.

- 2.3. Following the designation of the forum and the neighbourhood area, SoWN began preparing a draft NDP. Throughout this process officers have provided SoWN with advice and assistance and have provided comments on draft versions of the NDP and associated documents. A detailed history of officers' engagement with SoWN is set out in Appendix 5.

What happens after a draft NDP is formally submitted to the local planning authority?

- 2.4. When a draft NDP is formally submitted to the Council (that is, when a draft document is submitted that the neighbourhood forum wishes to be taken forward to the next stage in the process, as opposed to a draft being submitted purely for advice/feedback from officers) it must make a decision whether the submitted draft plan, and certain documents that are required to accompany the draft, meet the relevant statutory requirements.
- 2.5. If a draft NDP is considered to meet those statutory requirements, the local planning authority is required to notify the body submitting the draft plan accordingly. The draft plan then needs to be made available for public comment by the local planning authority for a minimum 6 week period. Various consultation bodies also need to be notified that the draft plan has been formally submitted. The local planning authority collates any representations received, as these will need to be made available to the independent person who is appointed in due course to conduct the examination of the draft plan. The local planning authority is itself entitled to submit representations about the draft plan as part of this process.
- 2.6. The requirement for the local planning authority to make a decision at this stage whether the draft NDP meets various requirements is contained in paragraph 6 of Schedule 4B to the 1990 Act. Paragraph 8 of Schedule 4B also imposes a duty on the examiner of the draft NDP to consider compliance with a range of matters, some of which overlap with the matters that are required by paragraph 6 to be considered by the local planning authority at this stage.
- 2.7. The examiner must consider for themselves whether the draft NDP meets the various statutory requirements that the local planning authority is required to consider when the draft plan is formally submitted to it. During the examination process, the local planning authority is entitled to make representations to the examiner about the appropriateness of the content of the draft NDP (bearing in mind that the draft plan is intended to serve, as noted further below, as part of the statutory development plan). The local planning authority could, for example, invite the examiner to recommend the making of changes to the draft plan.
- 2.8. As part of the examination process, the examiner has the power to recommend deletion and/or modification of the content of the draft NDP in such a way as the examiner considers would enable the draft plan to satisfy the various applicable statutory requirements. However, an examiner might be of the view that a draft plan cannot be 'rescued' by way of proposed changes to the content, or a neighbourhood forum may not be willing to allow the draft to be modified as recommended by the examiner. The local planning authority would need to decide in such circumstances how to respond, including considering whether a draft plan should proceed to be put to a vote in a referendum. .

What requirements must a draft NDP meet at this stage?

- 2.9. The detail of the statutory requirements to be complied with at this stage is set out in the Town and Country Planning Act 1990 ('the 1990 Act') and in the Planning and Compulsory Purchase Act 2004 ('the

2004 Act'). Section 38A(3) of the the 2004 Act' states that Schedule 4B to the 1990 Act, which makes provision about the process for the making of neighbourhood development orders, is to apply in relation to neighbourhood development plans (subject to the modifications set out in section 38C(5) of the 2004 Act). Paragraph 6 of Schedule 4B provides as follows (in sub paragraph (3), the first set of words in square brackets are the ones that apply in the case of neighbourhood development orders, and the second set of words in square brackets are those that apply in the case of neighbourhood development plans):

6.

1) This paragraph applies if –

- a) a proposal has been made to a local planning authority, and
- b) the authority have not exercised their powers under paragraph 5 to decline to consider it.

2) The authority must consider -

- a) Whether the qualifying body is authorised to act for the purposes of a draft development order to act in relation to the neighbourhood development area concerned as a result of section 61F,
- b) Whether the proposal by the body complies with provision made by or under that section,
- c) Whether the proposals and the documents and information accompanying it (including the draft neighbourhood development order) comply with provision made by or under paragraph 1, and
- d) Whether the body has complied with the requirements of regulations made under paragraph 4 imposed on it in relation to the proposal.

3) The authority must also consider whether the draft neighbourhood development order complies with the provision made by or under [sections 61E(2), 61J and 61L] [sections 38A and 38B of the 2004 Act].

4) The authority must

- a) notify the qualifying body as to whether or not they are satisfied that the matters mentioned in sub-paragraphs (2) and (3) have been met or complied with, and
- b) in any case where they are not so satisfied, refuse the proposal and notify the body of their reasons for refusing it.

2.10. To assist in assessing whether the draft NDP meets the statutory requirements as set out in paragraph 6 of Schedule 4B, officers have prepared a checklist. The completed checklist is at Appendix 6. In drawing up this checklist, officers have had regard to the guidance materials that were prepared and published on line by the [Planning Advisory Service](#) (PAS), although it should be noted that the PAS materials have not been updated since 2015/6.

2.11. It should be noted that the legislation does not spell out what exactly is meant by 'provisions made by or under' sections 38A and 38B of the 2004 Act. It is up to local planning authorities to construe the legislation, including any relevant statutory instruments, in order to work out what the requirements are that must be complied with. As far as officers are aware, this process of interpreting the legislation has not as yet been tested in the courts.

2.12. Section 38A(2) of the 2004 Act provides that: 'A "neighbourhood development plan" is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan'. Officers consider that the definition of a

“neighbourhood development plan” as contained in Section 38A(2) of the 2004 Act is one of the matters that must be complied with under paragraph 6(3) of Schedule 4B.

- 2.13. Officers note that section 38A(2) of the 2004 Act refers to a neighbourhood development plan as setting out policies in relation to the development and use of land, but that the sub-section does not go on expressly to say that a neighbourhood development plan must only contain policies of that nature. However, a neighbourhood development plan (once it reaches the stage of having legal effect) forms part of the statutory development plan, by virtue of Section 38(2) of the 2004 Act. For this reason, and having regard to the national planning practice guidance discussed in more detail below, officers are of the view that the parts of a neighbourhood development plan that amount to policy content - as opposed to being contained in supporting text or in an annex - should be limited to matters that relate to the development and use of land.
- 2.14. As regards other requirements that the draft NDP is required to meet at this stage, these include the obligation for the neighbourhood forum to have carried out consultation prior to submitting a draft NDP to the local planning authority. The detail of the way in which this consultation needs to be carried out is contained in the Neighbourhood Planning (General) Regulations 2012.
- 2.15. A full list of the various requirements to be complied with is contained in the left hand columns of the table of Appendix 6.

Assessment of whether the draft SoWN NDP should proceed to the next stage

- 2.16. Officers have assessed the submitted documents against the relevant statutory requirements. This consideration is set out in the table in Appendix 6 of this report. On balance, the officer assessment that has been undertaken leads officers to recommend that the submitted documents should be formally published and submitted for examination.
- 2.17. During this assessment officers have had particular regard to Policy P20 of the draft SoWN NDP, and whether this can be said to amount to a policy relating to the development and use of land. Policy P20 in its present form states that “the neighbourhood element of CIL [Community Infrastructure Levy] generated in the area should where feasible be used to fund projects set out in section 9 of the neighbourhood plan or other projects in consultation with SoWN”. The objective of this policy is, as officers read it, to seek to have local CIL receipts allocated to specific projects following consultation with the neighbourhood forum.
- 2.18. Officers have needed to consider carefully whether the inclusion of Policy P20 in the draft NDP submitted by SoWN as a proposed plan policy – as opposed to being included by way of supporting text, or as part of a schedule or annex to the draft plan – presents a difficulty as regards compliance with the various statutory requirements noted in Appendix 6 and, if it does, whether the draft plan should nonetheless proceed to the next stage of the process. As part of this consideration, officers have looked in detail at what the national Planning Practice Guidance (PPG) says about the expected coverage of neighbourhood plans and in particular what is said in the PPG about the relationship between what is in a neighbourhood plan and CIL spend. This is addressed in the next section..

Planning Practice Guidance on content of neighbourhood plans

- 2.19. Officers have considered guidance in the Planning Practice Guidance (PPG) on both CIL and neighbourhood planning. In relation to the neighbourhood element of CIL, the PPG sets out that where

there is no parish, town or community council, “the CIL charging authority retains the levy but should engage with the communities where development has taken place and agree with them how to best spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods using their regular engagement tools”. This part of the PPG goes on to say that “the use of neighbourhood funds should therefore match priorities expressed by local communities, including priorities set out formally in neighbourhood plans. Where a neighbourhood plan has been made, the charging authority and communities should consider how the neighbourhood portion can be used to deliver the infrastructure identified in the neighbourhood plan as required to address the demands of development” (Paragraph 073 Reference ID: 25-073-20140612).

- 2.20. The engagement mechanism that the Council has previously identified is the preparation of non-statutory Co-operative Local Investment Plans (CLIPs). In January 2014, Lambeth Cabinet agreed that the neighbourhood element of CIL to be spent locally would be increased from the mandatory 15% to 25% and that the Council, with input from local communities, would prepare CLIPs. CLIPs address the requirement for local authorities to set out clearly and transparently their approach to engaging with neighbourhoods on local priorities for the neighbourhood element of CIL. In July 2014, Lambeth Cabinet agreed the decision-making process and boundaries for CLIPs. In January 2017, Lambeth Cabinet agreed criteria for the allocation of the neighbourhood element of CIL (NCIL) to enable the Council to address the impacts of development more widely across the borough and meet outcomes in the Borough Plan, by allowing flexibility in allocation of NCIL across CLIP boundaries.
- 2.21. Whilst the section of the PPG noted above suggests that the spending of the neighbourhood element of CIL should be in accordance with priorities formally set out in NDPs, other parts of the PPG provide further guidance about the extent to which this issue falls to be addressed in NDPs. Paragraph 045 (Reference ID: 41-045-20140306) advises that “a qualifying body may wish to consider what infrastructure needs to be provided in their neighbourhood area alongside development such as homes, shops or offices. Infrastructure is needed to support development and ensure that a neighbourhood can grow in a sustainable way”. Paragraph 046 (Reference ID: 41-046-201403016) sets out that “a qualifying body should set out in their draft neighbourhood plan the prioritised infrastructure required to address the demands of development identified in the plan”.
- 2.22. Elsewhere, the PPG provides that “wider community aspirations than those relating to development and use of land can be included in the neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable, for example set out in a companion document or annex” (Paragraph 004 Reference ID: 41-004-20170728).

Officers' view in relation to draft Policy P20

- 2.23. Draft policy P20 seeks to influence the taking of CIL expenditure decisions. However, CIL expenditure decisions are not planning matters and those decisions must be taken by the Council in accordance with all relevant policies and procedures, and criteria, which govern expenditure decisions. In the view of officers, the inclusion of a policy about CIL spend in a neighbourhood development plan, which is a document prepared by a neighbourhood forum and not by the Council itself, would not amount to a fetter of the Council's discretion when it comes to the taking of CIL expenditure decisions. However, that aside, from a planning policy perspective, officers continue to be of the view that as currently presented, draft Policy P20 does not amount to a policy in relation to the development and use of land.
- 2.24. The inclusion of draft Policy P20 is a matter that will need to be considered by the examiner in due course.

2.25. Notwithstanding officers' view in relation to draft Policy P20, the list of priorities for the spend of the neighbourhood element of CIL identified in the draft SoWN NDP has been fully considered and taken into account in the preparation of the emerging Waterloo CLIP.

Conclusion regarding taking the draft plan forward to the next stage

2.26. In view of their assessment in relation to Policy P20, officers have considered whether the Council is obliged to reject the draft NDP at this stage. They have come to the view, on balance, that it is permissible to allow the draft plan to proceed to publication and examination. In reaching this view, they have taken the following points into consideration:

- (i) The appropriateness of the inclusion of draft Policy P20 as a neighbourhood plan policy will need to be considered by the examiner in due course. It is a matter about which representations can be made, including by the Council as local planning authority;
- (ii) Elements of the national policy guidance set out in the PPG (as noted above) - which is guidance but which needs to be considered - can be said to be open to interpretation. Officers are not aware that the meaning of the relevant legislation, or the content of the PPG, has been addressed to date by the courts in relation to neighbourhood planning;
- (iii) The draft NDP is considered to be compliant with the other requirements that need to be considered at this stage, as listed in Appendix 6.

What is Southwark's position?

2.27. As the SoWN neighbourhood area covers both Lambeth and Southwark a decision whether the draft NDP should proceed to publication and examination must be made separately by each local planning authority. At the time of preparing this report a decision had not been made by the London Borough of Southwark.

3. Finance

3.1. There is no cost in arriving at the decision whether the submitted draft NDP should proceed to the stage of formal publication and submission to examination.. The cost of officer time of assessing whether the submitted draft NDP has been absorbed within existing budgets.

4. Legal and Democracy

4.1. The requirements that neighbourhood planning documents need to satisfy are set out in legislation, in particular the Town and Country Planning Act 1990 as read with the Planning and Compulsory Purchase Act 2004.

4.2. In summary, in order for a draft NDP to progress to the stages of publication and submission to an examiner, the local planning authority is required to be satisfied that the draft plan satisfies various requirements and is obliged to issue a decision accordingly.

4.3. Section 2 of the report and Appendix 6 address the various requirements that have been identified as needing to be addressed at this stage.

4.4. Section 2 of the report identifies a number of difficulties in the interpretation of the relevant legislation and sets out the view of officers regarding the appropriateness of inclusion of a particular proposed policy in

the draft NDP. Section 2 of the report also explains the obligations on the part of the examiner and the entitlement of the Council as local planning authority to seek to make representations regarding the continued inclusion of the relevant draft policy in its present form.

- 4.5. This proposed key decision was entered in the Forward Plan on 3 April 2018 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by Cabinet. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days, the call-in period, must elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. Consultation and co-production

- 5.1. There are no requirements to consult on the subject matter of this decision.
- 5.2. There has been a process of dialogue with SoWN in the production of the draft NPD, as set out in Appendix 5. This has also involved liaison with officers from Southwark.

6. Risk management

- 6.1 The decision that the Cabinet Member is being asked to make is a decision that the legislation requires the Council to make.
- 6.2 There are no specific risk management steps that have been identified. .

7. Equalities impact assessment

At this stage in the neighbourhood planning process the Council is making a decision whether the draft NDP meets the relevant statutory tests and can proceed to publication and submission to examination. The decision that is being taken is not considered to have any impacts, because the decision is concerned only with whether the draft plan should proceed to the next stage of the plan-making process. The draft plan itself can have no effect in land use planning terms at this stage. No equalities impact assessment has therefore been carried out in relation to the decision that the Cabinet Member is being asked to make.

8. Community safety

None.

9. Organisational implications

9.1 Environmental

None.

9.2 Staffing and accommodation

None.

9.3 **Procurement**

None.

9.4 **Health**

None.

10. **Timetable for implementation**

- 4.1. The Council is required to notify SoWN that a decision on the submitted documents has been made.
- 4.2. The submitted documents must then be formally published on the Council's website for a minimum of 6 weeks and any consultation body referred to in SoWN's consultation statement must be notified that the Council has received the draft NDP. The draft NDP then needs to be submitted for examination.

Audit trail				
Consultation				
Name/Position	Lambeth directorate/ division or partner	Date Sent	Date Received	Comments in para:
Sue Foster	Strategic Director Neighbourhoods and Growth	8.10.18	8.10.18	
Sandra Roebuck	Director Planning Growth and Employment	3.10.18	5.10.18	
Rob Bristow	Assistant Director Planning, Transport and Development	2.10.18	5.10.18	
Susan Boucher	Legal Services	4.10.18	5.10.18	Throughout
Maria Burton	Democratic Services	4.10.18	5.10.18	
Andrew Ramsden	Corporate Resources	4.10.18	5.10.18	
Cllr Matthew Bennett	Cabinet Member Planning and Investment	8.10.18	8.10.18	2.20, 2.25

Report history	
Original discussion with Cabinet Member	12 March 2018
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	3 April 2018
Key decision reasons	3. Community Impact
Background information	Schedule 9 to the Localism Act 2011 Schedule 10 to the Localism Act 2011

	<p><u>Neighbourhood Planning (General) Regulations 2012</u></p> <p><u>Planning Practice Guidance</u></p> <p><u>Cabinet Report 13 January 2014 – Community Infrastructure Levy Neighbourhood Funding and Co-operative Local Investment Plans (CLIPs)</u></p> <p><u>Cabinet Report 14 July 2014 - CLIPs and neighbourhood CIL: boundaries and decision-making</u></p> <p><u>Cabinet report 16 January 2017 - CLIPs: Delivery Framework and Refining Allocation Criteria</u></p>
<p>Appendices</p>	<p>Appendix 1 – Draft South Bank and Waterloo neighbourhood plan</p> <p>Appendix 2 – SoWN Consultation Report</p> <p>Appendix 3 – SoWN Basic Conditions Statement</p> <p>Appendix 4 – SEA Screening Report</p> <p>Appendix 5 - Overview of the history of production of the draft SoWN NDP</p> <p>Appendix 6 – NDP submission requirements checklist</p>

APPROVAL BY CABINET MEMBER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:

Signature _____ **Date** _____

Dominique Barnett, Principal Planning Policy Officer, Neighbourhoods and Growth

I approve the above recommendations:

Signature _____ **Date** _____

Councillor Matthew Bennett, Cabinet Member for Planning, Investment and New Homes

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None