

Committee Agenda



City of Westminster

Title:

Planning & City Development Committee

Meeting Date:

Wednesday 30th March, 2022

Time:

6.30 pm

Venue:

Rooms 18.01.02.03, 18th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6QP

Members:

Councillors:

Robert Rigby (Chairman)	Selina Short
Geoff Barraclough	Mark Shearer
David Boothroyd	Susie Burbridge
Jim Glen	Nafsika Butler-Thalassis
Louise Hyams	Guthrie McKie
Tim Roca	Antonia Cox
Eoghain Murphy	Tony Devenish



Members of the public are welcome to attend the meeting and listen to the discussion Part 1 of the Agenda

This meeting will be live streamed and recorded. To access the recording after the meeting please revisit the link.

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An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, please contact the Committee Officer, Georgina Wills, Committee and Governance Officer.

**Email: gwills@westminster.gov.uk; Tel: 07870 548348
Corporate Website: www.westminster.gov.uk**

Note for Members: Members are reminded that Officer contacts are shown at the end of each report and Members are welcome to raise questions in advance of the meeting. With regard to item 2, guidance on declarations of interests is included in the Code of Governance; if Members and Officers have any particular questions they should contact the Head of Committee and Governance Services in advance of the meeting please.

AGENDA

PART 1 (IN PUBLIC)

1. MEMBERSHIP

To report any changes to the membership.

2. DECLARATIONS OF INTEREST

To receive and record declarations of interest.

3. MINUTES

To sign the minutes of the last meeting as a correct record of proceedings.

(Pages 3 - 12)

4. NATIONAL POLICY & PLANNING REFORM UPDATE

(Pages 13 - 24)

5. ENVIRONMENTAL SUPPLEMENTARY PLANNING DOCUMENT

(Pages 25 - 28)

6. PLANNING ENFORCEMENT TEAM PERFORMANCE AND LOCAL ENFORCEMENT PLAN

(Pages 29 - 38)

7. SUMMARY OF MEMBER TRAINING DURING 2022

(Pages 39 - 40)

8. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

9. DATE OF NEXT MEETING

29 June 2022

Stuart Love
Chief Executive
22 March 2022



CITY OF WESTMINSTER

MINUTES

Planning & City Development Committee

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Planning & City Development Committee** Committee held on **Monday 25th October, 2021**, Rooms 18.06 & 18.07 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Robert Rigby (Chairman), Geoff Barraclough, David Boothroyd, Jim Glen, Louise Hyams, Selina Short and Mark Shearer

Apologies for Absence: Councillor Tim Roca, Councillor Eoghain Murphy, Councillor Guthrie McKie, Councillor Antonia Cox and Councillor Susie Burbridge

1 MEMBERSHIP

1.1 There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

2.1 There were no declarations of Interest.

3 MINUTES

3.1 That the Minutes of the Planning and City Development Committee meeting held on 27 July 2021 be approved.

3.2 Matters Arising from the Minutes

3.2.1 Minutes. 3.3.1 Minutes 5 Draft Early Community Engagement Guidance

Members were informed that Planning Aid for London had been approached to explore how they might be able to act as a 'Community Champion' support residents, Amenity Societies, and Neighbourhood Forums during the planning consultation process. The role they would perform would be to ensure that these interested parties engage effectively and positively to consultation at pre-application and application stage. There are various models being considered, and this is to ensure that adequate support is provided that is proportionate to different scales of development and that is appropriate to meet the needs of all parties. Planning Aid for London currently provides free

support for people in London who cannot afford professional support to assist them in interacting with the town planning and development processes. The 'Community Champion' role being explored with them would be separate and in addition to their existing charitable work. The provision of a 'Community Champion' would be funded by external parties.

3.2.2 Minutes 4.2 City Plan and Planning Policy Update

Members were advised that the Planning Policy Team were reviewing Supplementary Planning Documents (SPDs) which had now become redundant under the new framework for determining planning applications. There are over 20 SPDs that are no longer 'fit for purpose' and officers are working to ensure that the new SPDs would fill any gaps and meet the requirements of the New City Plan. A Cabinet Member Report is to be submitted to the Cabinet Member to set out the intended action to be taken to withdraw and, where appropriate, replace outdated SPDs. The Environmental Supplemental Planning Documents has been out for consultation and is being finalised. Officers advised that usage of permeable materials would be included in the Environment Supplementary Planning Document

3.2.3 Minutes 6.3 Review of Planning Applications Sub-Committee Formats / Civico

Members were informed that it was proposed for all hybrid meetings to be broadcasted via CIVICO and that there was ongoing testing to ensure that the Software is fully functional and compatible with the Council's corporate IT systems. Members were advised that Microsoft (MS) Teams would continue to be used to broadcast meetings during the interim.

4 UPDATE ON TEMPORARY COVID-19 RELATED LEGISLATION & REGULATIONS

4.1 The Committee received a report which provided an update on the temporary changes to planning legislation that have been introduced since the beginning of the Coronavirus pandemic in March 2020. Where the temporary legislation or regulations have been extended or replaced by a permanent alternative the report considers the impacts this may have on the operation of the planning service and for future planning decisions in Westminster.

4.2 Members were informed that changes were made by Government through secondary legislation to certain aspects of the planning system in the period following the beginning of the first Coronavirus lockdown in March 2020. Some of these changes were temporary (seeking to assist 'business as usual' activities during the pandemic and the recovery in the immediate aftermath), whilst others were permanent, seeking to support the longer-term recovery, address the decline in traditional high street retailing that began before the pandemic, but was accelerated by it, and promote the delivery of more housing.

4.3 Members held a discussion and noted the following: -

- The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 enabled local authorities to hold virtual planning committee meetings up to 7 May 2021. The provision was used by the Council from April 2020 onwards to ensure continuity of decision making on large and high-profile applications. The provision ended after the 6 May 2021 and there was a seamless transition to hybrid committees from May 2021. Virtual and hybrid meetings have resulted in growth in the number of people observing and taking part in committee meetings.
- The Committee noted that Members were required to be physically present at hybrid meetings to make legal binding decisions and agreed that this should be reviewed. Members commented on the benefits of attending meetings in person and being able to join them remotely.
- Members agreed that it was preferred for Officers to attend the Hybrid Planning Applications Sub-Committee in person when contentious Applications were to be considered by the Sub-Committees.
- That a considerable percentage of speakers at the Hybrid Planning Applications Sub-Committees preferred to attend these meetings in person at City Hall instead of joining them remotely.
- The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 allowed restaurants and cafes and drinking establishments to provide takeaway food without the need for planning permission for a temporary period of 12 months. The provision has been extended to March 2022. Members commented that a considerable number of premises may have been using this provision without notifying the Council and agreed that this area should be closely monitored, and that mechanisms should be put in place to ensure that premises revert to their previous use after March 2022. The Committee noted that several Members had undertaken casework regarding public nuisances from premises that had introduced or expanded their takeaway offer during the pandemic.
- The Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 provided new regulations to support 'business as usual' activities and ensure continuation of timely decision-making. Regulations include measures to relax requirements for site notices, publication of notices in newspaper and physical inspection of documents. The Council has not had to use these relaxed requirements for site or press notices. New processes were developed to support BAU in other areas of the planning service, such as enabling customers to view scanned planning history records remotely, rather than in the office. Members were advised that the new digital service had been widely received by various parties and that there had been no requests to reintroduce the option for planning records to be inspected physical. Nevertheless, Officers advised that the public and developers/planning agents would still be able to physical

inspect documents and be provided support in this area as and when pandemic restrictions allow.

- The Business and Planning Act 2020 had introduced numerous temporary provisions which included, Pavement Licences, Extended Construction Hours and Extension of Existing Permissions/Consents. There have been over 1215 Pavement Licence applications up to 31 March 2021. Of these 930 were granted. Pavement licences have been extended to 30 September 2022 by the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021.
- Members noted that there have been three applications made under the Extended Construction Hours provisions and welcomed that all had been refused. The applications were refused on the grounds that amenities of neighbouring properties could be potentially impacted.
- Members noted that the new provision for 'Moveable Structures' was primarily designed to support the hospitality sector following the Covid-19 pandemic and agreed that some control should be retained regarding these applications and their usage. Members requested that this should be reported in the consultation response. Members raised concerns about potential nuisances to neighbouring properties from 'Moveable Structures' and noted that a large majority of the Borough was densely populated and agreed that this should be considered as a factor regarding these temporary structures.
- The Committee agreed that despite the apparently low uptake of some of the measures introduced, they have afforded businesses and the development industry within the city a 'safety net' during the pandemic, allowing them to adapt to the unique circumstances of the pandemic response without undue planning restriction. The transition back towards the levels of planning control experienced prior to the pandemic in 2022, at the end of the current extension periods, is appropriate. The Committee also agreed that the temporary changes made by Government were welcome and enabled the Council to put in place amended practices to limit the impact of the pandemic on planning decision making. They noted that this experience has enabled the Council to move more seamlessly since May 2021 to the current hybrid committee format.

RESOLVED:

1. Members noted the contents of the report and the ongoing impacts that changes to planning legislation and regulations related to the pandemic has on the planning service and planning decision making.
2. That Officers incorporate the Committee's comments regarding 'Moveable Structures' in their response to the governments consultations in that some control should be retained with granting permissions and agreeing usage for these temporary structures and their possible impact of public nuisance to neighbouring properties.

5 UPDATED DRAFT EARLY COMMUNITY ENGAGEMENT GUIDANCE

- 5.1 The Committee received a report which provided an update on the Draft Early Community Engagement Guidance. The initial version of the draft Early Community Engagement guidance was published for consultation in spring 2021 and reported to the PCD Committee in March 2021. All respondents welcomed the principle of introducing guidance that provides greater clarity regarding the expectations for early community engagement on emerging development proposals. Those who engaged with the Council on the initial version of the guidance were notified of the updated version of the draft guidance at the beginning of October and additional comments were sought by 5 November. The intention is to publish the finalised guidance by the end of November 2021 following review of comments in response to the second consultation period.
- 5.2 The first engagement phase enabled the approach set out in the initially published guidance to be developed and finessed so that it is better aligned with the expectations of communities, whilst providing sufficient flexibility to allow developers and applicants to design their engagement strategies to meet the needs of each development they bring forward. There were several themes which arose from the consultation these include: -
- The role of neighbourhood forums should be better explained and the need for development to accord with neighbourhood plans should be better articulated.
 - The need to deliver development that complies with the development plan should be more clearly explained.
 - Developers should speak to community groups in advance to establish how they can best be engaged with.
 - The scales of development within the scope of the guidance should be expanded to include non-major development. Many respondents noted that non-major development can often have greater impacts on neighbouring communities.
- 5.3 Following initial consultation amendments were made to the Guidance. These include an expectation that developers who frequently undertake development in Westminster should adopt their own engagement charter and/or set of principles, better recognition of the role of Neighbourhood Forums and Plans, systems to encourage community groups to engage with officers, the introduction of the concept of a 'Community Champion' and extension of the scope of the guidance to include impactful non-major development. Case studies have also been added to provide worked examples.
- 5.4 Members held a discussion and noted the following: -
- That a number of pilot studies would start in 2022 and would operate over the first year following publication of the guidance. The case studies will be used to test the principles and processes set out in the guidance. There has been a

positive response from the planning and development community about the proposed guidance. Members were advised that consultation on the guidance had already successfully promoted the benefits of early engagement in the planning pre-application process within the developer community.

- That the Early Community Engagement Guidance would not be a compulsory document, but instead offered detailed advice on how to deliver best practice engagement. Members noted that not all interested parties would adhere to the guidance, but that the engagement that developers have undertaken would be set out in greater detail in committee reports in future.
- The Committee agreed that where the developer team engages meaningfully with interested parties earlier in the pre-application process, this typically delivers better planning outcomes at application stage. Early consultation enables better, more informed decisions to be made.
- That the community engagement process would also be used by officers to gain greater insight into the views of interested parties and to obtain local expertise on proposed developments and this would aid their roles when negotiating with potential developers at pre-application stage.
- The Committee welcomed that local Ward Councillors would be included as part of the consultation process and noted that they already act as community champions.
- That an updated list of Amenity Society and Neighbourhood Forums would be provided, and these contact lists were reviewed periodically. Officers advised that data from other Council Services were drawn upon and measures put in place to ensure that they capture all interested parties. Members noted that there had been an increase in the digitalisation of the planning application process and that data from these databases were utilised.
- Members requested that officers circulate the list of Amenity Society and Neighbourhood Forums to the Committee.
- Members agreed that developers should use hybrid meetings when consulting with interested parties, where appropriate, and commented that this would improve participations and be a more cost-effective way of engaging with many groups.
- Members welcomed the Community Champion concept and their future role in assisting the local communities with their response to pre-application engagement. The Committee noted that the Community Champion expertise could also be used during consultations on proposed Council owned scheme developments.
- Members agreed that the Draft Early Community Engagement Guidance should also include good practises for smaller planning applications and should encourage agents and applicants to engage with their neighbours and interested parties prior to starting their applications.

- The Committee agreed that the Draft Early Community Engagement Guidance should include examples of good community engagement for different sized developments such as domestic applications and large developments. Members also agreed that applicants and planning developers should be encouraged to engage with interested parties throughout the construction phases.

5.5 Members welcomed the Draft Early Community Engagement Guidance and thanked Officers for their work. The Committee agreed that there should be a launch event for the guidance.

RESOLVED:

1. Members noted the updates made to the Draft Early Community Engagement Guidance following the initial consultation phase undertaken in spring 2021.
2. That Officers circulate the list of Amenity Society and Neighbourhood Forums to the Committee and that Members provide feedback on its contents.
3. That a launch event be arranged for the Early Community Engagement Guidance.

6 ARTICLE 4 DIRECTIONS IN WESTMINSTER

6.1 The Committee received a report which provided an overview of recent changes to permitted development rights (PDR) and the council's Article 4 Directions restricting certain permitted development rights.

6.2 The national planning practice guidance defines permitted development rights as 'a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. These are often highly specific and limited to a few issues. PDR mean that full planning permission is not required, instead relies on a slimmed-down "prior approval" process, with a more limited range of considerations – e.g. flood risk, transport impacts, land contamination, etc. Expansion of PDR in 2021 incorporates changes to the Use Classes Order in 2020 – numerous different commercial uses subsumed into overarching "commercial, business and service use" or "Class E". Class E incorporates a much wider range of uses including offices, shops, cafes and restaurants, indoor sports facilities, medical services and nurseries. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity.

6.3 Members held a discussion and noted the following: -

- Members welcomed that High Streets would be protected, and that their offerings would be expanded.

- Members were informed that Article 4 did not provide any provisions regarding vacant buildings and that compulsory purchase orders could only be used to deal with longstanding empty properties where the site is untidy and caused nuisances. Officers advised that a Council Investment Service was to be introduced and part of their remit would be finding premises for potential investors, and this would include vacant buildings. Members agreed that the Economy Team should liaise with Ward Councillors about long-standing vacant properties.
- Members were advised that there were no current data on the number of retail units which had converted to financial and professional services units. The Committee were reminded that these uses were within Class E and that developers were not required to notify of these changes. Officers advised that other data sources such as Business Rates would be reviewed to monitor these changes

RESOLVED:

Members noted the contents of the report

7 UPDATE ON NEIGHBOURHOOD PLANNING IN WESTMINSTER

- 7.1 The Committee received a report which provided overview of recent neighbourhood planning activity in Westminster. Westminster has the most designated neighbourhood areas of any London Borough (21), the highest number of designated neighbourhood forums (15) and London's only Community Council (Queen's Park), which has neighbourhood planning powers.
- 7.2 Neighbourhood planning was established via the 2011 Localism Act and allows local communities to devise local planning policies that then form part of the statutory development plan for that area. These are subject to public consultation and scrutiny via an independent examination process to determine whether the plan meets the 'Basic Conditions' (which include conformity with City Plan and London Plan policies) and other legislative requirements. Neighbourhood plans are then subject to local referendum as a final step ensuring support from their local community to adopt the plan. The council has a duty to support neighbourhood planning and officers offer advice and guidance to neighbourhood forums as well as undertaking the statutory processes involved in plan-making.
- 7.3 Members held discussion and noted that Neighbourhood Plans
- Give communities direct powers to shape the development and growth of their area
 - Can influence where new homes, offices, shops, etc. are built
 - Can influence design of new development

- Should support the delivery of strategic policies set out in the City Plan and London Plan and should shape and direct development that is outside of those strategic policies
- Should contain policies for the development and use of land
- Once adopted, neighbourhood plans become part of the council's statutory development plan. This means they have equal weight with the City Plan and London Plan in decision-making.
- On adoption, the percentage of Community Infrastructure Levy (CIL) allocated to the neighbourhood from new developments increases to 25% (from 15%).

7.4 Members held further discussion and noted the following: -

- Members noted that there were several Neighbourhood Forums who were at different stages with preparing their Plan and requested for a timeframe to be provided about when these would be formally adopted.
- Members welcomed that officers support were provided to Forums and agreed that the Planning Policy Team should be pro-active about promoting the service that are available to Forums in relation to Neighbourhood Plans.
- That Neighbourhood Plans life span should ideally reflect the City Plan and London Plan. Members were advised that Neighbourhood Plans could be reviewed periodically and would be affected by any changes to the National Planning Policy. There is provision which enable minor modifications to be made to Plans without the need to undergo a full examination or a referendum.

Members thanked Officers for their work.

RESOLVED:

- 1 Members noted the contents of the report
- 2 That a timeframe be provided of when new Neighbourhood Forums Plans are to be adopted.

8 ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

- 8.1 Members were requested to forward Agenda Items for future Committee.
- 8.2 Members agreed that a report on Enforcement should be brought to their next Committee and should include information about performance and the adoption of a Local Enforcement Plan.
- 8.3 That Members be provided a report which provided further update about Planning Reforms and their adoptions at their next Meeting.

8.4 Members noted that they received an annual update regarding planning appeals and that the weekly list which details appeals would be updated.

8.5 The Committee noted that a training programme would need to be devised for new Members following the Local Elections in May 2022.

9 DATE OF NEXT MEETING

- 30 March 2022

The Meeting ended at 8.00 pm

CHAIRMAN: _____

DATE _____



City of Westminster

Planning & City Development Committee

Date: 30 March 2022

Classification: General Release

Title: National Policy & Planning Reform Update

Report of: Director of Place Shaping and Town Planning

Financial Summary: None.

Report Author and Contact Details: Oliver Gibson (ogibson@westminster.gov.uk/07971026919)

1. Executive Summary

- 1.1 This report provides an update on changes to national planning policy & planning reform that has occurred following the government's Planning White Paper that was published in August 2020. It also identifies the impacts these changes are having in Westminster.

2. Recommendation

- 2.1 Members are asked to consider the contents of this report and to note the recent changes to national planning policy and guidance and the implications these have for planning decision making in Westminster, as identified in the report.

3. Background

- 3.1 The government set out plans for extensive and ambitious changes to the planning system in its 'Planning for the Future' White Paper, published in August 2020. The White Paper received in excess of 40,000 representations in response to consultation held during the second half of 2020 and the Department for Levelling Up, Housing and Communities (DLUHC) has been considering these consultation responses in the period since. To date there has been no firm commitment from government on when a formal response to the consultation on the white paper may be expected. Recent press speculation indicates that that a significant number of the proposals for reform in the white paper may be dropped or scaled back and that planning reform may now form part of a wider package of reforms included in a Levelling Up and Regeneration bill, which is likely to be laid before Parliament later in 2022.
- 3.2 Despite the absence of a full response to the white paper consultation, the government has proposed and delivered a range of amendments to various aspects of the planning system in the intervening period. Typically, they have been implemented through new or adapted secondary legislation or through the publication of new or updated guidance. This report draws together these incremental changes over the last 21 months and considers their impact on future planning decisions in Westminster.

4. Principal Changes to Planning Legislation and Guidance Since August 2020

Amendments to the Use Classes Order & Associated Permitted Development Rights

- 4.1 In September 2020, shortly after the publication of the 'Planning for the Future' White Paper, the government used changes to secondary legislation to make amendments to the Town and Country Planning (Use Classes) Order 1987 (the 'UCO') and associated changes to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO'). These significant changes to land use planning were reported in detail to this committee on 26 October 2020¹. The amendments have reduced planning previous controls on the use of land, particularly for those uses now falling within the new broad Class E use class that contains many types of commercial use including shops, restaurants and offices.
- 4.2 In terms of adaptation to the amended UCO, the most significant change has been the need for development to be more closely scrutinised and conditioned where an applicant is seeking an unrestricted Class E use. In a densely populated urban environment such as Westminster it is rarely the case that all uses within Class E can be accommodated without the potential for adverse impacts occurring to neighbouring occupiers. Accordingly, the council has developed new conditions to restrict uses in new developments to those within Class E that would not cause material harm to neighbouring occupiers or the local environment more widely. Typically, applicants are understanding of the need to balance the flexibility offered by Class E with the need to address the potential adverse impacts of new development.
- 4.3 There is evidence that the advent of Class E has caused significant frustrations for some residents, particularly where shops can now convert to restaurants without the need for planning permission, even in circumstances where the council has successfully resisted such a change of use at appeal in the past.
- 4.3 To date the impact of the associated permitted development right, which came into force on 1 April 2021 and allows Class E uses to change to residential use without the need for planning permission (but still requires prior approval), has been relatively limited. This is likely to be due to the limitations placed on the size of premises that can benefit from this permitted change (not larger than 1,500m²) and as the premises must be vacant for 3 months prior to submission of a prior approval application. Allied to this, at the current time the pre-existing Article 4 Direction preventing conversion of offices to residential within the Central Activities Zone remains in effect until 1 August 2022.
- 4.4 The majority of prior approval applications that have been made have been for small numbers of new residential units and have generally been approved, with only two examples of applications being refused. These applications, which related to the same property, were principally refused on grounds relating to the adverse impact on the character and appearance of the conservation area and the vitality of the Queensway/Westbourne Grove Major Centre within which the property is located (see Table 1).

¹ Planning and City Development Committee report and minutes (see Item 5):
<https://committees.westminster.gov.uk/ieListDocuments.aspx?CId=368&MId=5747>

Table 1 – Prior approval applications for Class E use to residential received since introduction of new permitted development right on 1 April 2021.

Reference Number	Site Address	Proposal	Decision Date	Decision
21/05281/P3JPA	John Stewart House 435-437 Edgware Road London	Notification for prior approval of the change of use of the first, second and third floors from Office (Class E) to five self-contained flats (Class C3).	22-Sep-21	Approved
21/05705/P3JPA	7 Porchester Gardens London W2 4DB	Notification for prior approval of the change of use from restaurant (Class E) on ground floor to residential (Class C3) to be connected to first floor existing residential flat and associated works.	08-Oct-21	Refused
21/07438/P3JPA	Basement And Ground Floor 26 Church Street London NW8 8EP	Prior approval application for conversion of lower ground floor into one self-contained unit, modification of ground floor to lower ground floor staircase.	23-Dec-21	Approved
21/07838/P3JPA	7 Porchester Gardens London W2 4DB	Notification for prior approval of the change of use from restaurant (Class E) on ground floor to residential (Class C3) to be connected to first floor existing residential flat and associated works.	01-Feb-22	Refused
21/08336/P3JPA	John Stewart House 437 Edgware Road London	Notification for prior approval of the proposal for change of use of ground floor from Class E (d), (e) and (g) to residential (Class C3) to create two flats.	24-Feb-22	Approved
21/08340/P3JPA	John Stewart House 437 Edgware Road London	Notification for prior approval of the change use of the ground floor from Class E (d), (e) and (g) to residential (Class C3) to create one flat.	24-Feb-22	Approved

- 4.5 To better manage the impacts of uncontrolled loss of Class E uses to residential under the new permitted development right, the council is in the process of introducing new Article 4 Directions to limit the permitted development right within the Central Activities Zone (CAZ) and the majority of the primary frontages in the town centre hierarchy.
- 4.6 With regard to the proposed Article 4 Direction covering the CAZ, the Minister of State for Housing recently wrote to the council asking the council to take a more targeted approach to its assessment of the impacts of the permitted development right within the CAZ so that the Article 4 Direction applies to the smallest possible geographic area. Officers are now working with the DLUHC on how the original proposals for this Article 4 Direction can be refined to meet the Secretary of State's requirements. The Article 4 Direction relating to the town centre hierarchy is already more targeted (for example it omits specific buildings that are listed or not in Class E use within town centres) and therefore officers are confident that this proposed Article 4 Direction, which is due to come into force on 3 December 2022, already meets the tests set out in the NPPF for Article 4 Directions (see also the later section in this report on recent updates to the NPPF).

Amended Requirements for Removal of Statues, Monuments and Memorials

- 4.7 In response to events that occurred during the Black Lives Matter protests during summer 2020, on 21 April 2021 the government amended planning requirements for the removal of statues, monuments, and memorials. Using a ministerial Direction, the Secretary of State (SoS) introduced a requirement for the SoS to be consulted for not less than 21 days prior to the grant of permission for the removal of a statue, monument, or memorial.

- 4.8 A second Direction requires that any listed building consent application that proposes *'...the full or part demolition of a statue, monument, memorial or plaque that are, or are part of, a listed building...'* must now be subject to notification to Historic England and any relevant National Amenity Society.
- 4.9 A third Direction excludes statues, monuments, and memorials from the category of structures that do not constitute development. Consequently, any proposal to remove or alter an existing statue, monument or memorial now comprises development requiring planning permission.
- 4.10 Often in Westminster statues, monuments and memorials are listed and therefore their removal would already have required consent prior to the ministerial Directions. There have not been any requests for removal of statues, monuments or memorials in light of the introduction of these changes, but the recently submitted application for amendments to Grosvenor Square Gardens does include removal of the 'Diplomatic Gates' and the removal of this memorial will require consultation in accordance with the new Directions.

Introduction of the National Model Design Code

- 4.11 In July 2021 the government published the National Model Design Code (the 'NMDC'), which sets out design parameters to help local authorities and communities decide what good quality design looks like in their area. The NMDC now forms part of the government's planning practice guidance and expands on the ten characteristics of good design set out in the National Design Guide published in January 2021, which reflects the government's priorities and provides a common overarching framework for design.
- 4.12 The introduction of a NMDC featured heavily in the August 2020 planning white paper and it delivers policy changes around design issues that respond to the Building Better, Building Beautiful Commission's 'Living with Beauty' report, which was published in January 2020.
- 4.13 It is intended that local planning authorities (LPAs) will develop their own design codes for different character areas using the methodology set out in the NMDC. These will assist developers and LPAs themselves to better identify and reinforce the beauty and good design that make different places distinctive and unique. In turn this will help to guide decision making so that it results in the refusal of development that is not well designed and supports the creation of healthy, environmentally, responsive, sustainable and distinctive places that have a consistent and high-quality standard of design.
- 4.14 Officers are receptive to the future development of design guidance and codes in Westminster and Design and Heritage SPDs will be developed in due course to support design and heritage policies in the City Plan. It is important to note though that as much of Westminster is located within a conservation area, our Conservation Area Audits already identify the aspects of the townscape that contribute positively to the character and appearance of the conservation area. Therefore, development in the city is already guided by a robust understanding of what elements of a place contribute to its design value and beauty.

Amended National Planning Policy Framework (NPPF)

- 4.15 In July 2021 the Government published a new version of the NPPF. The principle focus of the updates were to strengthen requirements on design quality (see also the preceding section on the NMDC), and promote the use of trees in new developments, as well as revise policies on plan-making, removal of statues (see earlier section in this report) and making of Article 4 Directions (see also section in this report on UCO and GPDO changes).

4.16 The main changes to the NPPF made in July 2021, which are of relevance to development in Westminster, are summarised below:

- Introduces measures aimed at improving **design quality**, including a new requirement for councils to produce local design codes or guides. The concept of 'beauty' has been added to the NPPF when assessing design quality. The NPPF now advises design codes should be used to give developers '*maximum clarity about design expectations at the earliest stage*' and significant weight should be attached to '*development that reflects local design policies and government guidance on design*' and '*outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area*'.
- An emphasis on using **trees** in new developments has been added. NPPF now says that '*planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible*'.
- New limits on the use of **Article 4 Directions** to restrict permitted development rights have been added. The NPPF now states that directions, which remove permitted development rights in specific areas, where they relate to residential conversions, should only be used where it is '*essential to avoid wholly unacceptable adverse impacts*', for example the '*loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability*'. In 'all cases', Article 4 Directions should be '*based on robust evidence and apply to the smallest geographical area possible*'.
- Councils should '*retain and explain*' **statues** rather than remove them (see earlier section in this report).
- The **United Nations climate change goals** have been added. The NPPF now states in its section on Achieving Sustainable Development that '*the purpose of the planning system is to contribute to the achievement of sustainable development*'.
- NPPF now identifies that 10% of all major housing schemes should comprise **affordable home ownership** properties (known as First Homes).
- Policies on **improving biodiversity** have been strengthened. Chapter 15 now identifies that '*opportunities to improve biodiversity*' should be integrated into a scheme's design (see also Biodiversity Net Gain discussed later in this report).
- The NPPF now clarifies that **neighbourhood plans can allocate large sites**. The previous version gave the impression that neighbourhood plans could only allocate small or medium-sized sites.

4.17 It can be seen from the topics addressed in the preceding bullet points that many of the changes to the NPPF in July 2021 were necessary to bring it in to line with earlier or subsequent standalone changes to various aspects of the planning system. In this regard further change is expected to the NPPF in 2022 so that it responds to the government's 'Net Zero Strategy: Build Back Greener', which was published in October 2021.

- 4.18 The net zero strategy, which was published by the Department for Business, Energy & Industrial Strategy (BEIS), sets out the government's overarching approach to meeting its 2050 net zero emissions target. The document sets out policy proposals to hit the 2050 target across a range of economic areas including power, heat and buildings, and transport. It identifies that the government recognises *'the importance of the planning system to common challenges like combating climate change and supporting sustainable growth'* and it goes on to identify that the government *'...will make sure that the reformed planning system supports our efforts to combat climate change and help bring greenhouse gas emissions to net zero by 2050. For example, as part of our programme of planning reform we intend to review the NPPF to make sure it contributes to climate change mitigation and adaptation as fully as possible'*.
- 4.19 In principle, future changes to the NPPF to reform national planning policy so that development in Westminster is better able to support the response to the climate emergency would be welcomed and would allow the council to give additional weight to sustainability improvements in future when making planning decisions, in line with our own climate action plan.

Fire Safety – Introduction of Planning Gateway One

- 4.20 On 1 August 2021 the government introduced 'Planning Gateway One' as part of the wider legislative response to events that led to the Grenfell Tower fire in 2017. Following the Grenfell Tower fire on 14 June 2017 the Government commissioned the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt. The report highlighted the need to transform the fire and building safety regime and recommended that *'some minimum requirements around fire safety will need to be addressed when local planning authorities are determining planning applications and will require input from those with the relevant expertise'*.
- 4.21 Government made a commitment in 'A reformed building safety regulatory system: government response to the 'Building a Safer Future' consultation' to introduce Planning Gateway One. It has two key elements:
- to require the developer to submit a fire statement setting out fire safety considerations specific to the development with a relevant application for planning permission for development which involves one or more relevant buildings, and
 - to establish the Health and Safety Executive as a statutory consultee for relevant planning applications.
- 4.22 Planning Gateway One applies to 'relevant buildings', which are defined as buildings that contain two or more dwellings or educational accommodation and are 18m or more in height, or 7 or more storeys in height. The gateway requirements are applicable to new development above this threshold and to any planning applications for alterations to relevant buildings (e.g. applications for new windows, air conditioning units, etc.).
- 4.23 The council updated its validation checklists for planning applications in November 2021 and fire statements are now a validation requirement for all development that includes a relevant building. Minor development, such as new windows or air conditioning units, is included in the validation requirement as it is necessary to avoid cumulative changes to buildings resulting in a significant adverse impact on a buildings overall fire safety. Officers have observed that in recent months these additional requirements are beginning to have an impact on the speed of determination of applications involving relevant buildings. This is due to increased frequency of applications being invalid for a fire statement (typically for smaller alterations to existing buildings) and because of receipt of more detailed

comments from the HSE (on larger new developments involving creation of a new relevant buildings). Typically, the concerns raised by the HSE can be addressed through revision of the strategy set out in the submitted Fire Statement and/or by amendment to the proposed development.

Environment Act 2022 – Introducing Biodiversity Net Gain

- 4.24 The Environment Act became law on 9 November 2021. The act introduces a 10% biodiversity net gain requirement for all new developments by amending the Town and Country Planning Act 1990 (as amended). On sites where these biodiversity gains are secured, they would have to be managed for at least 30 years. Typically, this will be secured via planning conditions, S106 obligations or conservation covenants.
- 4.25 The requirement for biodiversity net gain does not change existing legal protections for important habitats and wildlife species. The act maintains the mitigation hierarchy of avoid impacts first, then mitigate and only compensate as a last resort.
- 4.26 It is expected that there will be flexible mechanisms available to increase the biodiversity value to demonstrate a 10% net gain. Works to enhance habitats can be carried out either on-site or off-site or through the purchase of 'biodiversity credits' from the Secretary of State. However, this flexibility may be removed (subject to regulations) if the onsite habitat is 'irreplaceable'. For such developments, arrangements to minimise their adverse effects and improvements, must be delivered on-site.
- 4.27 Demonstrating biodiversity net gain will require the introduction of an approach to measuring biodiversity, which is not included in the Act. The government has published a metric developed by Natural England titled 'Biodiversity Metric 3' which is designed to provide ecologists, developers, planners and other interested parties with a means of assessing changes in biodiversity value (losses or gains) brought about by development. However, it has committed to laying the biodiversity metric or any revised biodiversity metric before Parliament before bringing it into use. Given this, it is not currently expected that the requirement for biodiversity net gain will become law and become a legal planning requirement until the introduction of secondary legislation in 2023. Notwithstanding this delay in this requirement becoming law, Policy 34 in the City Plan and Policy G6 in the London Plan already require development proposals in Westminster to deliver biodiversity net gains.

Permitted Development Rights for Moveable Structures

- 4.28 In January 2022 the government introduced a new permitted development rights for moveable structures within the curtilage of pubs, restaurants and other visitor attractions by amending the GPDO.
- 4.29 The government consulted on changes to permanently allow pubs, restaurants and other visitor attractions to place moveable structures in their curtilage in autumn 2021 and this consultation was reported to the Planning and City Development Committee on 25 October 2021². In response to consultation the council expressed concerns regarding the lack of restrictions proposed by government at consultation stage on the size, number, location and period of use of moveable structures. The council's concerns were principally that the lack of restrictions would lead to harm occurring to the amenity of nearby residents and that moveable structures would have a harmful visual impact, particularly where they would be sited in the curtilage of a listed building.

² Planning and City Development Committee report and minutes (see Item 4):
<https://committees.westminster.gov.uk/ieListDocuments.aspx?Cid=368&Mid=5747>

4.30 In making the permitted development right permanent, government has listened in part to the concerns voiced by the council and others and has introduced a number of restrictions on moveable structures. These include:

- limiting the right to a single movable structure;
- precluding them from being within 2 metres of a boundary with a residential property;
- limiting their height to 3 metres;
- limiting their footprint to the lesser of 50% of the footprint of the building or 50m²;
- precluding any advertisements on the structure.

However, where moveable structures are in the curtilage of an unlisted building there are no restrictions on the length of time they may be erected for, nor is their erection to the front of premises precluded.

4.31 Where a pub, restaurant or visitor attraction is listed the same restrictions as above apply, but in addition the moveable structure may only remain for a period of 120 days within a 12-month period. Additionally, a prior approval application is required, which allows the council to consider the siting of the moveable structure and the method by which it is to be installed.

4.32 It is likely that the new permitted development rights will be utilised by premises with curtilage land, particularly during warmer months and officers will monitor the initial impact of these new rights during 2022. It is likely that the rights will give rise to the need for additional enforcement investigation, particularly in respect of the positioning of moveable structures relative to neighbours and the public highway and in terms of the length of time that structures in the curtilage of listed buildings have been erected.

4.33 The changes to the GPDO also introduced permitted development rights that allow local authorities unrestricted periods during which to hold markets and to expand permitted development rights for the Ministry of Defence land. However, these new and expanded rights will have limited impact in Westminster.

'Levelling Up the United Kingdom' White Paper

4.34 The levelling up white paper was published on 2 February 2022 and is a wide-ranging document addressing a significant number of issues that, in combination, contribute to 'levelling up' communities across the country. The white paper contains a number of significant planning announcements which are of relevance to Westminster.

- Local communities will continue to have '*a meaningful say on individual planning applications*'. This appears to confirm that the government has moved away from proposals in the planning white paper to limit consultation on individual planning applications. The levelling up white paper notes that new digital technologies will be used to improve engagement.
- Local plans '*will be made simpler and shorter*'. As well as simplifying future development plans the white paper aims to ensure the data that underpins plans becomes more transparent and understandable and takes into account the environment that will be developed.
- The white paper promises to '*widen the accessibility of neighbourhood planning*'.

- It encourages more accessible hybrid models for planning committees, such as is used already in Westminster, to combine in-person and remote attendance.
- The white paper explains that the Government is to set ‘*a more positive approach to employment land in national policy to support the provision of jobs*’. Currently the NPPF is largely focused on housing delivery and therefore it can be expected that future iterations of the NPPF will seek to redress this and have a more balanced focus.
- There is support for ‘*enhance compulsory purchase powers to support town centre regeneration*’ in the wake of the rapid changes that have adversely impacted high streets in recent years.
- The paper reiterates that the government is looking at developing a land value capture as part of its proposed new infrastructure levy. It states ‘*the current planning system enables some developers to benefit disproportionately and unfairly from the land they develop. This is why the UK Government is developing models for a new infrastructure levy which will enable local authorities to capture value from development more efficiently, securing the affordable housing and infrastructure communities need*’.

4.35 It is expected that proposals within the levelling up white paper will form the basis of a Levelling Up and Regeneration bill later in 2022.

Updated Committee Reports & Pre-Application Fees to Reflect Evolving National and Westminster Policy Context

4.36 In light of the changing focus of national planning policy, the adoption of the new City Plan and new London Plan in 2021, and the adoption of the Environmental SPD in March 2022, officers are in the process of updating the committee report format to better reflect the council’s current planning and wider priorities. The updated format will focus greater attention on material considerations such as energy performance and sustainability, biodiversity gain, community engagement and economic benefits, as well as ensuring that the reports identify relevant policies in made neighbourhood plans.

4.37 The updated format will also support officers to produce more consistent reports in future in terms of the location within reports of particular topics, the signposting of the key considerations within the report summary, and the level of supporting information provided (i.e. photographs, photomontages and plans etc.). It is expected that use of the updated committee reports will commence in April 2022.

4.38 Allied to the update of committee reports, officers are also exploring options to rationalise the current system for reporting late representations to the committee (known as ‘blue’ and ‘red’ representations) to ensure late representations are used by interested parties to raise genuinely new issues or concerns and to ensure the process is more transparent and open for those observing committee meetings in person or online. This review may include steps such as introduction of a ‘cut off’ for submission of late representations that is in advance of the committee meeting. Any changes to current committee processes will be introduced later in 2022.

4.39 The pre-application advice fees charged by the council were amended on 14 March 2022 to align with the council’s priorities as set out in the Climate Action Plan and the

recently adopted Environmental SPD. A new reduced fee of £300 (incl. VAT)³ has been introduced householders considering certain energy performance and sustainability improvements to their homes. The improvements included in this new service are installation of energy efficient glazing, green roofs, solar panels and air or ground source heat pumps. The advice service is available to householders in flats and houses and is applicable to both listed and unlisted buildings.

5. Financial Implications

5.1 None.

6. Legal Implications

6.1 None.

7. Conclusion

7.1 The changes made to the planning system to date following the 'Planning for the Future' White Paper published in August 2020 have been more limited in scope and ambition than the proposals set out in the white paper. Nevertheless, the changes to Class E in particular have had a significant impact on the role of the planning process in land use planning, particularly within our town centres and within the Central Activities Zone and has placed increased importance on the role played by landowners and other regulatory regimes, such as premises licensing, in controlling the impacts of new commercial uses that fall within Class E.

7.2 Other changes to planning policy and guidance have been more limited in terms of their immediate impact; however, it is expected that the role of design codes in defining 'beauty' and the importance of biodiversity net gain will become increasingly apparent in future. These issues will have increased importance in future planning decision making.

7.3 More substantive changes to the planning process lie ahead, most likely as part of a Levelling Up and Regeneration bill expected later in 2022. However, it is unlikely that many of the most radical changes contained within the planning white paper, which had the greatest potential for significant impact in Westminster, will be included. This is likely to include the side-lining of proposals such as limiting public consultation on planning applications in Growth Areas and the concept of 'growth zones'. A revised and more balanced approach to planning reform, retaining the key existing elements of the planning process, is likely to enable the council to better balance delivery of sustainable growth with other key City Plan objectives, including responding to the climate emergency and delivery of affordable housing.

If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)

³ Pre-Application Advice Service: <https://www.westminster.gov.uk/planning-building-and-environmental-regulations/planning-applications/request-pre-application-planning-advice>

Appendix

N/A

Background Papers

None.

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City of Westminster

Planning & City Development Committee

Date: 30th March 2022

Classification: General Release

Title: Environmental Supplementary Planning Document

Report of: Director of Policy and Projects

Financial Summary: The implications will be managed within existing resources.

Report Author and Contact Details: Sean Walsh, Principal Policy Officer
(swalsh2@westminster.gov.uk; 07811 676 435)

1. Executive Summary

1.1 This report sets out how consultation responses on the Environmental Supplementary Planning Document (SPD) have been used to inform and strengthen the guidance in the final document, which was adopted on 25th February 2022.

2. Recommendation

2.1 Members are asked to note the content of this report.

3. Introduction

3.1 The council announced a Climate Emergency in September 2019 and set the ambition for it to be net zero carbon by 2030, with the whole city to follow suit by 2040, 10 years ahead of the Government target of 2050. To help support these aims, and provide more detailed guidance to support the implementation of environmental policies in the City Plan, the council has prepared, consulted on, and now adopted, an Environmental SPD. This brings together guidance on a range of environmental issues including air quality, green infrastructure, flooding, energy, waste and retrofitting and sustainable design, and covers local environmental impacts of development such as light, noise and odour, land contamination and construction impacts.

3.2 The guidance within the SPD supplements the council's strengthened planning position in the City Plan to climate resilience, gives more prominence to the weight of environmental issues, and will help to ensure that developments deliver a higher proportion of emissions savings at the development site, in line with net zero ambitions. It also shines a spotlight on the issues that all stakeholders must collectively work together to resolve to address the climate emergency.

3.3 Whilst the new SPD does not have development plan status, it has followed formal processes for adoption set out in planning legislation, including extensive public consultation, and is now a material consideration in the determination of planning applications.

4. Consultation

4.1 In line with statutory requirements, consultation on the draft Environmental SPD took place during May - June 2021; a period of six weeks. At this time a range of stakeholders were invited to comment, including the development industry, statutory consultees such as Historic England and the Environment Agency, and local people including Amenity Societies and Neighbourhood Forums. During the consultation period, a series stakeholder workshops on each of the main topic areas the SPD covers was carried - to enable stakeholders to better understand the council's intentions and make informed consultation responses.

4.2 In total, 49 separate consultation responses were received from a diverse range of stakeholders representing residents, businesses, developers, and professional organisations. Consultation responses provided strong support for the council's direction of travel on environmental issues, and has helped improve the effectiveness of the document, by highlighting the need for better cross referencing to other council activity and strategies, and the need for additional technical detail in some areas. In broad terms there was a push from Neighbourhood Forums and Amenity Societies for the council to do as much as possible to tackle climate change. Feedback from landowners and the development industry largely focussed on the need for more clarification on the assessments required for each type of development. This has been addressed in the final SPD through better signposting to the recently updated Local Validations Requirements, and the imminent Planning Obligations and Affordable Housing SPD.

4.5 In terms of the thematic contents of the document, further details of how it has been updated to address key issues raised through public consultation are provided below:

Air quality

4.6 As an area that residents feel strongly about, this chapter has been strengthened to say more about the sources of air pollution and how the council intends to reduce pollution as well as mitigate its effects. Greater clarity has been provided on when Air Quality Neutral and Positive standards apply, and signposting to the GLA's new draft technical guidance on how such matters are assessed has been added. That guidance sets out:

- how air quality status should be assessed, based on the levels of emissions associated with heating and supplying energy to a new building, and private vehicular movements to and from the building by its occupants; and
- financial penalties as a measure of last resort where emissions exceed benchmark standards, and the development does not therefore meet the appropriate air quality standard.

Local Environmental Impacts

- 4.7 In response to residents' concerns of the impacts of development on the local environment during the construction phase, greater cross referencing to the updated Code of Construction Practice, and the mitigation measures within it, has been added.
- 4.8 Additional information has also been provided on how conditions may be applied to proposals for new Class E uses, to limit harmful impacts from future changes that would not need planning permission.
- 4.9 Further context on why shisha smoking is singled out from other forms of smoking has been added in response to queries on this issue from café owners.

Green Infrastructure

- 4.10 A number of respondents noted that this section did not refer to the city's waterways, which make a positive contribution to biodiversity, access to nature, leisure activities and cooling. This has been rectified in the final version of the document, along with strengthened references to the need to protect and enhance biodiversity more generally.
- 4.11 Responding to some issues raised about how requirements for new or improved green infrastructure is assessed, further detail has been added on Biodiversity Net Gain (reflecting Natural England's Biodiversity Net Gain Matrix), and the use of the London Plan's Urban Green Factor until a locally specific approach based on the Wild West End Matrix is developed.

Flood Risk

- 4.12 This section has been updated to reflect comments that greater referencing to the findings of the council's Strategic Flood Risk Assessment, in particular its requirements for developments near tidal flood defences would be beneficial. Greater emphasis on the biodiversity benefits of Sustainable Drainage Systems (SuDS) has also been added, and more detailed information on the flood risk impacts of basement developments.

Energy

- 4.13 Increased signposting has been added to other plans and strategies, in particular the Climate Emergency Action Plan, to show what else the council is doing to de-carbonise energy, in response to issues raised regarding how the council intends to achieve the 2040 net zero target.
- 4.14 While much of the section focusses on our approach that new development proposal should follow the energy hierarchy of "Be Lean (i.e. use less energy), Be Clean (i.e. supply energy efficiently) and Be Green (i.e. prioritise renewable energy), more information has also now been provided on the refurbishment of existing buildings. In response to feedback that this should be prioritised over demolition, more information has been provided on how the GLA's approach to Whole Life-cycle Carbon Assessments (which includes consideration of the retention of the existing building) will be applied. Further information has also been added that the benefits of refurbishment need to be carefully balanced against other sustainability objectives including the need to deliver new housing and economic growth, meaning demolition will still be appropriate in some circumstances.

Waste Management

- 4.15 Signposting to the Municipal Waste Management Strategy has been added to this section to help readers find more information on non-planning related matters regarding the collection of waste, which was raised by several representors.
- 4.16 Improved links between the circular economy, including avoiding the demolition of existing buildings before refurbishment options have been considered as part of a Whole Life-cycle approach to Carbon Assessments, has also been provided. Further information has also been added on how waste storage for Use Class E developments will be conditioned given the flexibilities offered by this Use Class of potential occupiers, and subsequent variations in waste needs.

Retrofitting and Sustainable Design

- 4.17 Additional text has been added to reflect concerns raised by the development industry that there is a balance in weighing the public benefits of delivering environmental improvements and protecting heritage assets. Greater signposting to other guidance on listed building and in conservation areas has also been added in response to queries from residents on domestic improvements within homes that fall within these designations.

5. Financial Implications

- 5.1 The implications will be managed within existing resources.

6. Legal Implications

- 6.1 The Director of Law has considered the contents of this report and does not have any additional comments.

7. Conclusion

- 7.1 Members are asked to note the content of this report and the implications that the new SPD will have for planning decision-making in Westminster.

If you have any questions about this report, or wish to inspect one of the background papers, please contact: Sean Walsh, Principal Policy Officer (swalsh2@westminster.gov.uk; 07811 676 435).

Background Papers:

[Environmental SPD, Adoption Version](#)



City of Westminster

Planning & City Development Committee

Date: 30 March 2022

Classification: General Release

Title: Planning Enforcement Team Performance and Local Enforcement Plan

Report of: Director of Place Shaping and Town Planning

Financial Summary: None.

Report Author and Contact Details: Roald Piper (rpiper@westminster.gov.uk / 07866 034666)

1. Executive Summary

- 1.1 This report provides an overview of the Planning Enforcement Team's performance over the past 5 years and provides an update on the development of a Local Enforcement Plan.

2. Recommendation

- 2.1 Members are asked to note the performance of the Planning Enforcement Team over the past 5 years and to support the ongoing development of the draft of the Local Enforcement Plan.

3. Planning Enforcement Team Structure and Function

- 3.1 The Planning Enforcement Team comprises a team of 18 officers with a Team Leader, x4 Area Planning Officers, x8 Senior Planning Officers, x4 Planning Inspectors and a Planning and Compliance Officer. One of the Senior Planning Officers is a recently created role, secured from ward budget funding from the Knightsbridge and Belgravia Ward. The team is largely reactive responding to complaints from members of the public regarding alleged breaches of planning control. The team investigates all breaches of planning control across the whole of the borough and is not broken down into geographical areas in the same way the Development Management Teams are broken down into North, Central and South areas.

- 3.2 Upon receipt of a complaint alleging a breach of planning control, the investigation is immediately passed to a Planning Inspector who will then have responsibility for the preliminary investigatory elements of the case. This includes but is not limited to reviewing the planning history of the property, attending the property to ascertain the facts (obtain photographs, measurements etc.) and determining who is responsible for undertaking the works/development. Once all the facts have been established, the Planning Inspector then has responsibility for drafting a report and uploading all information obtained from the site visit onto the UNIFORM database for consideration by an Area Planning Officer and Senior Planning Officer at the weekly "Morning

Meeting” process. The Inspectors work to strict timescales and are expected to undertake all site visits within 5 working days (commencing from the day after the complaint is received). If the complaint pertains to works to a listed building, the Inspector will attend the property on the same day wherever practicable to ensure that the special architectural and historic interest of the listed building is preserved, and any damage strictly limited. This is a crucial part of the team’s remit to protect Westminster’s unique and iconic heritage.

- 3.3 During the weekly “Morning Meeting” process, the Inspector’s reports are considered and where a breach of planning control is identified, warning letters are immediately drafted, and the investigation allocated to a Senior Planning Officer to progress and resolve. The complainant is also provided the name and contact details of the respective Senior Planning Officer investigating the breach of planning control. In circumstances where no breach of planning control is uncovered, letters are sent to the complainant advising of the outcome of the investigation and explaining the reasons for closure of the case.
- 3.4 Wherever possible, the Senior Planning Officer will attempt to resolve the investigation through negotiation but there are times when the negotiation becomes unnecessarily protracted or the breach is so severe (contrary to policy or having a detrimental impact on amenity) that it becomes necessary to pursue formal enforcement action. All reports drafted recommending issue of an enforcement notice (or other formal notice) are the subject of scrutiny and approval by the Director of Law. On the basis the report is approved, authority to then serve the notice is given by the Team Leader and the notice subsequently served on all persons having a material interest in the property/land.
- 3.5 The recipients of most formal notices have a statutory right of appeal, and this right is often exercised. Once an appeal is submitted, all enforcement action against the breach of planning control is effectively held in abeyance pending determination of the appeal. The Planning Enforcement Team will always robustly defend all appeals and often benefit from the support of local councillors and residents at Informal Hearings or via submission of written representations to the Planning Inspectorate.
- 3.6 Attached are some examples of the typical breaches of planning control the Planning Enforcement Team deal with daily.

9 Southwick Street, W2

In this first example, a complaint was received from a neighbour regarding the erection of a timber structure on the ground floor terrace at the rear of the building without the benefit of planning permission. Following issue of warning letters, applications for planning permission were submitted to retain the structure (Ref: 21/07706/FULL) and/or to replace it with an open-sided gazebo structure (Ref: 21/07707/FULL). Both applications were subsequently refused, and final warning letters were issued threatening formal enforcement action should the unauthorised structure not be removed. Following issue of the warning letters, the structure was dismantled and removed resolving the breach of planning control.



Flat A, 258 Ashmore Road, W9

A complaint by a member of the public was received regarding a large timber outbuilding erected in the rear garden of this ground and first floor flat, which occupied most of the amenity space of the rear yard. Following action taken by the Planning Enforcement Team, including the service of an Enforcement Notice, the owner elected to submit an application for planning permission for a smaller shed, which was subsequently approved on 23rd March 2021 (Ref: 21/00493/FULL). As can be seen in the photographs below, the unauthorised timber structure the subject of the Notice has been removed and the smaller approved shed erected which is much more in keeping with its surroundings. Accordingly, the breach of planning control has been resolved.



104 Clifton Hill, NW8

A complaint from a member of the public was received regarding the condition of this listed building. An inspection of the property confirmed that not only was it in a poor state of repair but that it had been the subject of unlawful alterations. Furthermore, research confirmed that the building was also on Historic England's Building at Risk register. The issue of warning letters did not result in the breach of planning control being resolved and consequently the team was left with no option but to pursue formal action and a s215 Notice was served specifying the remedial works required to improve the condition of the building. The Notice had the desired effect in that it sparked the owner into action and applications for both planning permission and listed building consent were submitted, subsequently approved and the building was not only restored to its former condition but improved. Following these works of improvement, the building was removed from Historic England's Building at Risk register.

Before



After



4. Performance of the Planning Enforcement Team

4.1 In terms of performance, the planning enforcement team continues to receive regular and numerous complaints from residents and Members on behalf of their constituents. During the Covid 19 pandemic and as a direct result of the lockdowns, there was as expected, a noticeable decrease in the number of complaints received by the team. In the year 2018/19 (prior to the pandemic), 2675 reports alleging breaches of planning control were received and this reduced to 1524 in 2019/20. There was a further reduction in the number of reports received totalling 1169 in the year 2020/21. However, following the easing of restrictions, the number of reports of alleged breaches of planning control is rising steadily again and it is anticipated that this will be in the region of 1800 complaints at year end on 31 March 2022. There is a clear upward trajectory with complaints being received and it is expected that this will continue and reach pre-pandemic levels of circa 2500+ annual complaints.

4.2 The team continues to deal with a large and varied caseload of live investigations and as of 30th November 2021, the team was dealing with 2671 breaches of planning control. Given the number of investigations being dealt with, it is inevitable for the reasons highlighted earlier in the report, that it will be considered necessary and expedient to pursue formal action and serve enforcement notices in some instances. The number of reports where authority has been granted for the service of enforcement notices has remained largely consistent with a slight dip in numbers in the year 2020/21 which again is attributable to the pandemic and the decrease in the volume of complaints received. By way of comparison:

2017/18: Authority was obtained for the service of 130 enforcement notices

2018/19: Authority was obtained for the service of 120 enforcement notices

2019/20: Authority was obtained for the service of 122 enforcement notices

2020/21: Authority was obtained for the service of 81 enforcement notices

2021/22: It is envisaged that by 31 March 2022, that authority will be obtained for the service of approximately 110 enforcement notices.

4.3 In terms of the appeals submitted against the enforcement notices, the team continues to robustly defend these notices and have an excellent record of dismissed appeals. The percentage success rate is as follows:

2017/18: 76% of the appeals determined were dismissed

2018/19: 86% of the appeals determined were dismissed

2019/20: 93% of the appeals determined were dismissed

2020/21: 68% of the appeals determined were dismissed

2021/22: As of the end of February 2022, 86% of appeals have been dismissed.

4.4 Table Showing Performance of WCC Over Past 5 Years

Year	Reports alleging a breach of planning control received	Authority Obtained to serve an Enforcement Notice	Appeal Success Rate	Investigations Closed
2017/18	2988	130	76%	2515
2018/19	2675	120	86%	2512
2019/20	1524	122	93%	2017
2020/21	1169	81	68%	1602
2021/22	1800*	110*	86%*	1800*

*: anticipated numbers expected as of 31 March 2022.

- 4.5 By way of comparison, the Head of Planning Enforcement at Camden Council (our neighbouring borough) has provided the following statistics over the same period.

Table Showing Performance of Camden Council Over Past 5 Years

Year	Reports alleging a breach of planning control received	Authority Obtained to serve an Enforcement Notice	Appeal Success Rate	Investigations Closed
2017/18	1205	41	77%	1297
2018/19	1145	120	62.5%	1353
2019/20	1128	143	65%	1121
2020/21	1247	92	79%	1051
2021/22	1187*	105*	84%*	904*

*: numbers as of 16th March 2022

- 4.6 In terms of the overall totals for the same 5-year period, Westminster's planning enforcement team received a total of 10,156 reports alleging a breach of planning control compared to Camden's total of 5,912. Westminster therefore receives on average 42 per cent more complaints than that of Camden. In terms of the number of investigations resolved and closed, Westminster closed a total of 10,446 compared to Camden's 5,726 which represents 45 per cent more closures. Authority to serve Enforcement Notices is reasonably consistent across both boroughs with Westminster obtaining authority to serve 563 Notices compared to Camden's 501. Westminster's success rate in defending appeals against service of the Notices stands at 81.8 per cent compared with Camden's 73.5 per cent.

- 4.7 Planning Resource recently published an article based on figures published by the Ministry for Housing, Communities and Local Government (MHCLG) as it was then known in relation to planning enforcement statistics covering the 12 months to March 2021. Overall, the number of Enforcement Notices issued across the country was 2,996, a drop of 24 per cent from 3,933 issued in 2019/20. What is interesting to note is that about 15 per cent of English planning authorities issued no planning enforcement notices at all in 2020/21. The figures reveal that London boroughs accounted for nearly four in ten (37 per cent) of Enforcement Notices issued in England in 2020/21. They also accounted for four of the top five and seven of the top ten local authorities ranked by the number of Notices issued.

As can be seen in the table below, Westminster ranked fourth in the country for Enforcement Notices served in the 12 months to March 2021.

Rank	Planning authority	Enforcement notices issued
1	Barnet	127
2	Brent	126
3	Ealing	105
4	Westminster	92
5	North Warwickshire	70
6	Camden	64
7	Haringey	59
8	Redbridge	54
9	Bradford	53

10	Herefordshire, County of	50
11=	Barking and Dagenham	49
11=	Buckinghamshire	49
13	Havering	48
14	Hillingdon	43
15	Lambeth	42
16	Bromley	40
17	Barnsley	35
18=	Colchester	33
18=	Epping Forest	33
18=	Waltham Forest	33
18=	Wokingham	33
22	Wandsworth	29
23=	Hackney	27
23=	Cornwall	27
25=	Cambridge	26
25=	Hammersmith and Fulham	26
25=	Brighton and Hove	26

5. Local Enforcement Plan Justification and Indicative Timescales

5.1 The current direction of travel of Central Government recognises that there is a need for local planning authorities to have stronger planning enforcement. In the White Paper, “Planning For the Future”, there is a presumption and/or recognition that stronger enforcement is needed and it states as follows :-

“As part of the implementation of our planning reforms, we want to see local planning authorities place more emphasis on the enforcement of planning standards and decisions. Planning enforcement activity is too often seen as the ‘Cinderella’ function of local planning services. But local communities want new development to meet required design and environmental standards, and robust enforcement action to be taken if planning rules are broken. As local planning authorities are freed from many planning requirements through our reforms, they will be able to focus more on enforcement across the planning system.”

5.2 With the liberalisation or de-regulation of the planning system and increased emphasis on “permitted development” subject to conditions and limitations; there inevitably will be greater emphasis on planning enforcement to not only ensure that the conditions and limitations are adhered to but that the development is implemented strictly in accordance with approved plans. Furthermore, the National Planning Policy Framework (NPPF) encourages Local Planning Authorities to publish a local enforcement plan (LEP) to manage enforcement proactively, in a way that is appropriate to their area. The LEP will therefore outline how the planning enforcement team will monitor the implementation of planning permissions and in particular the discharge of conditions including pre-commencement conditions and ensure strict compliance with the terms of these conditions.

5.3 As an aside, the planning enforcement team recently (as of 1 February 2022) introduced a new system of monitoring pre-commencement conditions. Where planning permissions are granted subject to pre-commencement conditions, new investigations are opened, letters issued to the relevant parties reminding them of the need to discharge the condition in advance of any development commencing on site. It is hoped that by adopting this proactive stance that fewer breaches of planning control will occur whereby development commences in advance of the requisite conditions being discharged. This will prove particularly helpful in reminding applicants of the requirement to discharge condition/s pertaining to the Code of Construction Practice.

These are often a cause of particular concern to residents once demolition commences on site.

- 5.4 The LEP would provide our residents and businesses with clarity on the processes and procedures the planning enforcement team will follow when investigating alleged breaches of planning control. It would also provide assurances that all reported breaches of planning control are investigated in a proportionate and transparent way, having regard to development plan policies and all other material considerations. This would help to manage public expectations and outline realistic timescales on how long resolution of breaches of planning control may take.
- 5.5 It is envisaged that as part of this process, there would be an opportunity to highlight the various planning enforcement tools/action that may be taken, confirm the rights of appeal and the appeal process and outline that in some instances (when in the public interest) that prosecution action may be necessary.
- 5.6 The LEP will also provide an opportunity to outline which breaches of planning control may be prioritised, those that cause the most harm (be that on amenity or our heritage assets) and those that align with “City for All” priorities. It would also present an opportunity to highlight emerging issues like shisha smoking and the gig economy (delivery depots, Uber Eats, Supper London etc.)
- 5.7 Given the impetus on early engagement with residents and businesses, it is proposed to consult as widely as possible with Westminster’s community on what breaches of planning control should be prioritised. Whilst it is not possible to predict the outcome of this engagement, it may well be the case that different areas (Wards) have different priorities and the LEP would need to reflect these distinct elements. It is though proposed to liaise with the new Director of Communities to ensure that any consultation is done at an early stage and that it reaches all parts of the Council’s rich and diverse community.
- 5.8 The indicative timescale to produce and adopt the LEP is likely to take between 10 and 12 months.

6. Financial Implications

- 6.1 None.

7. Legal Implications

- 7.1 None.

8. Conclusion

- 8.1 The planning enforcement team continues to deal with all alleged breaches of planning control in a transparent and consistent manner and always seeks to expedite resolution of the breach. Where negotiation fails to resolve the breach amicably, formal notices are issued, and the team robustly defends these notices on appeal.
- 8.2 Given Central Government’s apparent renewed focus on strengthening planning enforcement, it is an opportune time to consider drafting and publishing a Westminster LEP. Planning enforcement provides integrity to the planning system and will provide both residents and businesses with the assurance that planning permissions are not only undertaken in accordance with the approved drawings but that all conditions the subject of the permission are strictly complied with. The LEP will also help to manage

expectations of the service and prescribe in detail the processes and procedures we are required to follow when investigating suspected breaches of planning control.

**If you have any questions about this report, please contact: Roald Piper
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City of Westminster

Planning & City Development Committee

Date: 30 March 2022

Classification: General Release

Title: Summary of Member Training during 2022

Report of: Director of Place Shaping and Town Planning

Financial Summary: None.

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Training Summary

Since the last update on training in July 2021 the Members of the Planning Applications Sub-Committees have undertaken the following training:

Date	Topic	Session Lead(s)
23 September 2021	Enforcement/Update of Legislative changes	Amanda Coulson, North Area Team Leader & Roald Piper, Planning Enforcement Team Leader
4 November 2021	Trees	Amanda Coulson, North Area Team Leader & Barbara Milne, Head of Arboricultural Services
31 January 2022	Neighbourhood Plans	Amanda Coulson, North Area Team Leader & Michael Clarkson, City Planning Policy Team Leader
14 March 2022	Carbon Zero	Amanda Coulson, North Area Team Leader & Tom Burke, Head of Design, Conservation & Sustainability

Following the commencement of the pre-election period on 28 March 2022 there will be no further Member training until after the election on 5 May 2022. Training for new Members of the Planning Applications Sub-Committees will be offered after the election, with dates to be confirmed at a later date.

If you have any questions about this summary, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)

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