



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Business, Licensing and Planning
Date:	22 March 2021
Classification:	General Release
Title:	Fitzrovia West Neighbourhood Plan Decision Statement
Wards Affected:	Marylebone High Street, West End
City for All:	Making the Examiner's recommended modifications to the Fitzrovia West Neighbourhood Plan and proceeding to local referendums will support vibrant communities by providing planning policies that respond to local issues. Up-to-date planning policies will also support the other pillars of City for All.
Key Decision:	No
Financial Summary:	The costs of amending the Draft Fitzrovia West Neighbourhood Plan and administering local referendums will be met within existing budgets.
Report of:	Executive Director of Innovation and Change

1.0 EXECUTIVE SUMMARY

- 1.1 This report seeks approval to make amendments to the draft Fitzrovia West Neighbourhood Plan in accordance with an independent examiner's recommendations, proceed to local referendums on whether the plan should be 'made' and, in the event of the result of the referendums being successful, to formally 'make' the plan. If 'made', the plan will form part of the council's Statutory Development Plan and be used alongside adopted policies in the London Plan and the City Plan to determine planning applications in Fitzrovia West.
- 1.2 Under neighbourhood planning regulations, councils are required to publish a 'decision statement', setting out what actions they propose to take in response

to an examiner's recommendations. A draft decision statement is provided as Appendix 1 of this report.

2.0 RECOMMENDATIONS

2.1 That the Cabinet Member agrees:

- A) That the recommendations of the examiner as set out in the council's decision statement (see Appendix 1) be accepted.
- B) That the examiner's recommendation that the Fitzrovia West Neighbourhood Plan, as modified in Appendix 2, proceed to two referendums (as is required for designated business neighbourhood areas).
- C) That in accordance with the examiner's recommendation, the referendum area be restricted the neighbourhood area designated by the council on 28th March 2014 as the Fitzrovia West Neighbourhood Area.
- D) That if the results of the two referendums are in support of the approval of the plan, the council proceeds to formally make the plan.

3.0 REASONS FOR DECISION

- 3.1 The examiner's recommendations will ensure the Fitzrovia West Neighbourhood Plan is clear and effective as a framework for making decisions on planning applications in the Fitzrovia West Neighbourhood Area. They address the concerns raised by the council and other stakeholders, and ensure the plan meets the basic conditions prescribed by legislation.
- 3.2 Before a neighbourhood plan can be made, it is a statutory requirement that it is first subject to two referendums in areas that are designated as business neighbourhood areas. Before this happens, the council must publish a decision statement setting out the actions it proposes to take in response to the examiner's report.

4.0 BACKGROUND, INCLUDING POLICY CONTEXT

- 4.1 Neighbourhood plans are statutory planning documents which can establish general planning policies for the development and use of land in a neighbourhood. They must be prepared by a designated neighbourhood forum made up of members of the local community. Once prepared, they are subject to public consultation, independent examination, and referendum(s).
- 4.2 Fitzrovia West neighbourhood area was designated by the council on 28th March 2014 in accordance with Section 61G of the Town and Country Planning

Act 1990. On 5th February 2015 Fitzrovia West Neighbourhood Forum (FWNF) were designated as the neighbourhood forum for the area, and subsequently began preparing a draft neighbourhood plan. FWNF were re-designated as the neighbourhood forum for the area on 20th February 2020.

- 4.3 FWNF published a draft plan for regulation 14 pre-submission consultation in July 2019. It was subsequently revised in light of comments received, before submission to the council in February 2020. Regulation 16 consultation on the plan was then carried out from May to August 2020.
- 4.4 In August 2020, the council, in consultation with FWNF, appointed Ms Jill Kingaby BSc (Econ) MSc MRTPI as independent examiner of the plan. The purpose of the examination was to determine if the neighbourhood plan met the basic conditions required by legislation, other legal requirements, and should proceed to referendums. The basic conditions, as set out in the Town and Country Planning Act 1990 (as amended) are that the plan:
- has appropriate regard to national policy;
 - contributes to the achievement of sustainable development;
 - is in general conformity with the strategic policies in the development plan for the area;
 - is compatible with EU regulations;
 - meets human rights requirements.
- 4.5 The examiner considered that a public hearing into the plan was not required and the examination was conducted through written representations. The examiner's report concludes that, subject to making the modifications recommended in her report, the plan meets the basic conditions set out in legislation and should proceed to local referendums. It also recommended that the area for the referendums should be limited to the neighbourhood plan area.

Modifications

- 4.6 The modifications recommended by the examiner respond to issues raised through formal consultation on the draft plan by respondents, including the council.
- 4.7 Through the examination process, the examiner encouraged FWNF and the council to seek to overcome areas of disagreement as far as possible through a statement of common ground. The key concerns, which were highlighted in the council's response to the formal consultation, regarding the proposed "principal residence" occupation criteria for new housing in Fitzrovia West, and the requirement to provide small business and retail units within larger office and retail developments, have been resolved at this stage. Constructive dialogue between the two parties also led to agreed changes to improve the

clarity and effectiveness of the plan with regards to other outstanding points that were raised by the council at consultation stage.

- 4.8 In producing the statement of common ground, there were also some areas where FWNF and the council were unable to reach agreement. On such matters, the examiner's recommendations, as set out in her report, largely agreed with the council. This included that:
- requirements for refuse storage and additional meeting space within policy PR2 'Housing Provision' should not be made as they are sufficiently covered by the emerging City Plan;
 - proposed clauses i and vi of policy B2 'Street frontages' setting requirements regarding "valued local services" and for individual proposals to provide "a range of outlets which meet a variety of local and other needs" should not be included as they are not implementable; and
 - proposed reference to residential use on upper floors in the West End International Centre should not be made as they were not in conformity with the emerging City Plan.
- 4.9 In the instance of policy EN1 'Promoting Improved Environmental Sustainability and Air Quality', while the council considered the policy unclear as conflating the two issues of air quality and carbon emissions, the examiner considered that, subject to the changes proposed by FWNF, the purpose of the policy was sufficiently clear and would contribute to the achievement of sustainable development and align with the emerging policies in the London Plan and Westminster City Plan. Officers support the examiner's conclusion on this matter.
- 4.10 Finally, the examiner also recommended a small number of additional minor modifications to the plan beyond those already agreed between the FWNF and the council, which were aimed at addressing comments from other consultees more comprehensively. Officers support the examiner's recommended further changes which help improve clarity and policy effectiveness.

Conclusion

- 4.12 Officers are satisfied that the examiner's recommendations would enhance the plan, improve its effectiveness in making planning decisions, and ensure the basic conditions are met. Ward Members have been briefed and have made no objections to the council following the examiner's recommendations.
- 4.13 The submitted plan was accompanied by a Strategic Environmental Assessment Screening Report and a Habitats Regulations Assessment Screening Report. None of the examiner's recommended modifications are considered to necessitate revisiting any of these assessments.

- 4.14 The examiner's recommendations on the plan are not binding on the council, who may choose to make a decision which differs from the examiner. However, any significant changes from the examiner's recommendations would require a further period of public consultation, and as set out above and in table 1 of Appendix 1, all examiner recommendations are supported by officers.

5.0 CONSULTATION

- 5.1 Consultation on the draft plan has been undertaken in accordance with statutory requirements. The submitted plan was accompanied by a consultation statement, prepared by FWNF, detailing how the drafting of the plan was informed by public consultation.
- 5.2 The council carried out formal Regulation 16 consultation on the plan from May to August 2020 in line with statutory requirements. This included publicising the plan on the council's website and writing to all relevant stakeholders on the council's planning policy database. Due to the coronavirus pandemic, physical copies of the plan were not made available at libraries or at council offices in this instance.
- 5.3 Now that the examiner's report has been received, it is a requirement of the neighbourhood planning regulations that the council publish a Decision Statement setting out the actions it proposes to take in response to the examiner's recommendations. A draft Decision Statement is provided in Appendix 1. If approved, this will be published on the council's website.

6.0 FINANCIAL IMPLICATIONS

- 6.1 Neighbourhood planning legislation imposes a number of costs on local authorities – including staff time to support forums, the cost of carrying out consultation on draft plans, and the costs of appointing an independent examiner and administering local referendums.
- 6.2 All costs are met from existing budgets, and where applicable, offset by grant funding available from the Ministry of Housing, Communities and Local Government (MHCLG) to support the roll out of neighbourhood plans. Once a date has been set for the referendums, the council is eligible to apply for a grant from MHCLG of £20,000. It is anticipated that this will cover the costs of Electoral Services arranging the referendums.

7.0 LEGAL IMPLICATIONS

- 7.1 The designation of Neighbourhood Forums, Areas, and the making of Neighbourhood Plans, are governed by the Town and Country Planning Act 1990 and the Neighbourhood Planning (General) Regulations 2012 (as amended).

7.2 It is a requirement of Regulation 18 of the Neighbourhood Planning Regulations 2012 (as amended) that local authorities publish a decision statement setting out how they intend to respond to an examiner's recommendations. A draft decision statement is included as Appendix 1 to this report.

7.3 If supported at referendums, the Fitzrovia West Neighbourhood Plan will become part of the statutory development plan and used alongside adopted planning policies in determining planning applications within the Fitzrovia West Neighbourhood Area.

8.0 BUSINESS PLAN IMPLICATIONS

8.1 None.

9.0 IMPACT ON THE ENVIRONMENT

9.1 The proposed plan (as modified by the Examiner's recommendations) includes a number of policies aimed at ensuring future development in Fitzrovia West has a positive impact on the local environment – in terms of protecting and enhancing new open or green spaces, promoting improved environmental sustainability and air quality, minimising energy use and maximising energy efficiency, and supporting sustainable mobility.

10.0 HEALTH, WELLBEING IMPACT ASSESSMENT INCLUDING HEALTH AND SAFETY IMPLICATIONS

10.1 The proposed plan (as modified by the Examiner's recommendations) includes a dedicated policy seeking to improve air quality and reduce greenhouse gas emissions. In addition, policies in the mobility and transport section seek to encourage sustainable mobility and the rationalisation of goods delivery. These seek to ensure that new development activity in the area fully addresses the health and wellbeing of residents, workers and visitors, and health and safety implications.

11.0 EQUALITIES IMPLICATIONS

11.1 Under the Equalities Act 2010 the council has a "public sector equality duty". This means that in taking decisions and carrying out its functions it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to foster good relations between persons who share a relevant protected characteristic and those who do not share it. The council is also required to have due regard to the need to take steps to take account of disabled persons' disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The 2010 Act states that "having due regard" to the need to promote equality of

opportunity involves in particular having regard to: the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic; take steps to meet the needs of persons sharing a protected characteristic that are connected with it; take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.

- 11.2 The courts have held that “due regard” in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equalities implications of the decision.
- 11.3 When the plan was submitted, it was accompanied by a Basic Conditions Statement, which incorporated an assessment of sustainability and considered whether policies would improve local opportunities. Broadly this found that the plan would have small scale positive effects on local opportunities, through matters such as promoting retail in the International Shopping Centre and cultural uses in the Strategic Cultural Area, seeking to protect office space, public houses, and encouraging new community facilities. The United Nations Sustainable Development Goals, which includes equalities matters, are also embedded into the plan itself. It is also worth noting that the plan must be consistent with City Plan policies, which themselves have been subject to detailed equalities impact assessment.
- 11.3 Officers have considered the need for a formal equalities impact assessment (EIA) of the Fitzrovia West Neighbourhood Plan. Policies promoting pedestrian movement (including for the less mobile), protecting open spaces and the natural environment, and encouraging community and cultural uses, will all have a positive impact on protected groups. Where the draft plan did present potential negative equality impacts (e.g. through seeking to restrict occupancy of new residential developments to local workers and students), such requirements have been removed through the examiner’s proposed modifications. As this means no outstanding negative impacts have been identified, it has been concluded that a full EIA is not necessary.

**If you have any queries about this report please contact: Michela Leoni on
07890 380194 or email mleoni@westminster.gov.uk**

APPENDICES

- 1 – Regulation 18 (2) Decision Statement
- 2 – Examiner’s report on the Fitzrovia West Neighbourhood Plan
- 3 – Fitzrovia West Neighbourhood Plan (Regulation 16 submission version)
- 4 – Statement of Common Ground between Fitzrovia West Neighbourhood Forum and Westminster City Council

Cabinet Member for Business, Licensing and Planning: Councillor Matthew Green

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

Cabinet Member for Business, Licensing and Planning

State nature of interest if any

.....

.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Fitzrovia West Neighbourhood Plan Decision Statement** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Business, Licensing and Planning

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....

.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, Director of Legal Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.