



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Business, Licensing and Planning
Date:	5 May 2021
Classification:	General Release
Title:	Soho Neighbourhood Plan Decision Statement
Wards Affected:	West End
City for All:	Making the Examiner's recommended modifications to the Soho 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 Soho 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 Soho 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 Soho.
- 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 in accordance with the examiner's recommendation, the Soho 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 to the neighbourhood area designated by the council on 5th April 2013 as the Soho 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 Soho Neighbourhood Plan is clear and effective as a framework for making decisions on planning applications in the Soho Neighbourhood Area. The recommendations 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, neighbourhood plans are subject to public consultation, independent examination, and referendum(s).

4.2 Soho neighbourhood area was designated by the council on 5th April 2013 in accordance with Section 61G of the Town and Country Planning Act 1990. On

25th July 2014 the Soho Neighbourhood Forum (SNF) were designated as the neighbourhood forum for the area, and subsequently began preparing a draft neighbourhood plan. Soho Neighbourhood Forum were re-designated as the neighbourhood forum for the area on 24th September 2019.

- 4.3 Soho Neighbourhood Forum published a draft plan for regulation 14 pre-submission consultation in June 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 July 2020.
- 4.4 In August 2020, the council, in consultation with Soho Neighbourhood Forum, 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 retained 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 the Soho Neighbourhood Forum and the council to seek to overcome areas of disagreement as far as possible through a statement of common ground. Many concerns, which were highlighted in the council's response to the formal consultation, regarding different policies, 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. The agreed changes between the Soho Neighbourhood Forum and the council are set out in Appendix 3 of the Statement of Common Ground (attached to this report as Appendix 4). The examiner considered that, subject to a number of proposed modifications, all the changes to the submitted plan as set out in Appendix 3 of the Statement of Common Ground should be made.

4.8 In producing the Statement of Common Ground, there were also some areas where the Soho Neighbourhood Forum and the council were unable to reach agreement. On one of those matters, the examiner's recommendations, as set out in her report, agreed with the council. This included that:

- In the instance of policy 22 'Refurbishment and Retrofitting of Existing Buildings', the council considered that the reasoned justification was too onerous as it required applicants to always demonstrate in their Planning Statements how they had assessed retrofitting options. The examiner proposed a modification to the reasoned justification to be less onerous and turn out the policy into an encouragement policy.

Officers support the examiner's conclusion on this matter.

4.9 In the instance of four policies, the examiner's recommendations, as set out in her report, disagreed with the council. This included that:

- In the instance of policy 14 'Provision of public toilets', while the council considered that references to planning obligations within the reasoned justification should be removed, the examiner considered that they should remain.
- In the instance of policy 16 'Car Free Residential Developments', while the council considered that the reasoned justification should be updated to better be in line with the City Plan, the examiner considered that the text is in general conformity with the London Plan, aligns with the City Plan, and will help achieve sustainable development.
- In the instance of policy 18 'Maintaining residential amenity during construction works', while the council considered that the policy should be updated to better align with the council's City Plan and Code of Construction Practice, the examiner considered that further changes were not needed as the text addresses a very important issue for Soho and contains appropriate references to the council's Code of Construction Practice and Construction Management Plans.
- In the instance of policy 19 'Delivery and Servicing Plans for New Development', while the council considered that a paragraph of the reasoned justification should be removed as could lead to confusion, the examiner considered that text should be read as a recommendation. The

examiner also considered that the policy would contribute to the achievement of sustainable development.

Officers accept the examiner's conclusions on all these matters.

- 4.10 Finally, the examiner also recommended a small number of additional minor modifications to the plan beyond those already agreed between the Soho Neighbourhood Forum 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

- 4.11 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.
- 4.12 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.
- 4.13 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 accepted 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 the Soho Neighbourhood Forum, 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 July 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 Soho Neighbourhood Plan will become part of the statutory development plan and used alongside adopted planning policies in determining planning applications within the Soho 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 Soho has a positive impact on the local environment – in terms of protecting and enhancing existing open spaces and considering new ones, 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 emissions. In addition, policies in the 'Sustainable development and the environment' 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 mixed-use developments which include a mix of occupiers, flexible workspaces suitable for small businesses, seeking to protect live music venues, and encouraging new

pocket parks. 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.

- 11.4 Officers have considered the need for a formal equalities impact assessment (EIA) of the Soho Neighbourhood Plan. Policies promoting pedestrian movement, protecting open spaces and the natural environment, promoting pocket parks, and a better air quality, 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 use of roof pocket parks to employees), such requirements have been removed through the examination process. 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: Marina Molla Bolta on 07971 026181 or email mmbolta@westminster.gov.uk

APPENDICES

- 1 – Regulation 18 (2) Decision Statement
- 2 – Examiner’s report on the Soho Neighbourhood Plan
- 3 – Soho Neighbourhood Plan (Regulation 16 submission version)
- 4 – Statement of Common Ground between the Soho 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: **Councillor Matthew Green**

Cabinet Member for Business, Licensing and Planning

State nature of interest, if any, below.

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(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 **Soho 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:

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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.