



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Business, Licensing and Planning
Date:	7 October 2021
Classification:	General Release
Title:	Adoption of the Fitzrovia West Neighbourhood Plan
Wards Affected:	Marylebone High Street, West End
City for All:	Formally adopting the Fitzrovia West Neighbourhood Plan 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 main costs associated with formally adopting the neighbourhood plan have been met within existing budgets. The decision to adopt the plan will increase the proportion of CIL receipts generated by new development in Fitzrovia West that the neighbourhood forum has a say in the spending of - from 15% to 25%.
Report of:	Executive Director of Innovation and Change

1.0 EXECUTIVE SUMMARY

- 1.1 This report seeks approval to formally ‘make’ (i.e. adopt) the Fitzrovia West Neighbourhood Plan. Once ‘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 The Fitzrovia West Neighbourhood Plan has been through independent examination and was subject to a referendum on 2 September 2021. As the

neighbourhood area is also designated as a business area, two separate referendums were held – one for residents and one for businesses. The plan was supported in both referendums – by 79.19% of voters in the resident's referendum, and 86.67% of voters in the business referendum. Under the Neighbourhood Planning (General) Regulations 2012 (as amended), the council should declare if it decides to make (i.e. adopt) the plan within 8 weeks of the referendum result, i.e. by no later than 28 October 2021.

2.0 RECOMMENDATIONS

- 2.1 That the Cabinet Member for Business, Licensing and Planning agrees to formally 'make' (i.e. adopt) the Fitzrovia West Neighbourhood Plan as part of Westminster's Statutory Development Plan, following the referendum held on 2 September 2021.

3.0 REASONS FOR DECISION

- 3.1 To meet the requirements of the Town and Country Planning Act 1990 (as amended), the Planning and Compulsory Purchase Act 2004, the Localism Act 2011, the Neighbourhood Planning Act 2017, and the Neighbourhood Planning (General) Regulations 2012 (as amended).

4.0 BACKGROUND, INCLUDING POLICY CONTEXT

Process

- 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 The governance arrangements for this decision have been discussed with the council's Committee and Governance Services. All decisions related to neighbourhood planning, including the making of an area, designation of a forum, publishing a decision statement, and 'making' the neighbourhood plan, arise from the Localism Act 2011. As such, they are an executive function of the Cabinet Member for Business, Licensing and Planning as set out in the terms of reference delegated by the Leader of the Council. Decisions relating to them – including the making of neighbourhood plans following referendums – are therefore taken through Cabinet Member Reports of this kind. This means

that there is no requirement for a vote of full council, as there would be with the council's own development plans.

Preparation of the Fitzrovia West Neighbourhood Plan

- 4.3 Fitzrovia West neighbourhood area was designated by the council on 28 March 2014 in accordance with Section 61G of the Town and Country Planning Act 1990. On 5 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 20 February 2020.
- 4.4 FWNF published a draft for pre-submission consultation under regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (as amended) in July 2019. It was subsequently revised in light of comments received, before submission to the council in February 2020. The council then carried out public consultation on the plan under regulation 16 of the Neighbourhood Planning (General) Regulations 2012 (as amended) from May to August 2020.
- 4.5 The submitted plan was accompanied by a Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report.

Examination

- 4.6 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.
- 4.7 The examination was conducted through written representations and the examiner's final report was issued on 8 June 2021. The report concluded that, subject to a number of modifications, the plan met 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.

- 4.8 As the local planning authority, the council is responsible for deciding what action to take in response to the examiner's recommendations. The council has determined that the modifications to the plan have no impact on the findings of its accompanying Sustainability Report, and on 12 July 2021 issued its Decision Statement. This agreed to the examiner's modifications to the plan (which responded to issues raised during consultation and examination, including points made by the council), and to proceed to referendum.

Referendum

- 4.9 The plan was then modified to incorporate the examiner's recommendations, and two referendums held on 2 September 2021 – one for residents, and one for businesses. For the residential referendum there was a turnout of 298 electors (10.18%); of these 236 (79.19%) were in favour of the neighbourhood plan and 62 (20.81%) against. For the business referendum there was a turnout of 30 electors (42.86% of those who registered as eligible). Of these 26 (86.67%) were in favour of the neighbourhood plan and four (13.33%) against. Legislation does not prescribe any minimum turnout for results to be valid.
- 4.10 Under changes to the Planning and Compulsory Purchase Act made by the Neighbourhood Planning Act 2017, as the plan has been approved at referendum, it now automatically forms part of the Statutory Development Plan. It should therefore now be used alongside policies in Westminster's City Plan and the London Plan in determining planning applications within the Fitzrovia West Neighbourhood Area. Notwithstanding this, Regulation 18A of the Neighbourhood Planning (General) Regulations 2012 (as amended) sets out that the council should formally 'make' the plan within 8 weeks of the referendum. Doing so confirms its intended use of the plan in determining planning applications.

Conclusion

- 4.11 Independent examination of the Fitzrovia West Neighbourhood Plan has found that with modifications, it meets the basic conditions prescribed in legislation. Modifications made to it post examination address concerns raised through consultation and examination – including those made by the council. The plan has received strong support from local residents and businesses at referendum. Ward Members have been briefed of the referendum results and have made no objections to the council now formally 'making' the plan.
- 4.12 The sole ground on which the council can decide not to make the plan is that it considers the plan would breach or be otherwise incompatible with any European Union obligation, or any of the rights under the European Convention on Human Rights. Officers have reviewed the Fitzrovia West

Neighbourhood Plan with this in mind and are satisfied that it does not raise any issues in this regard.

- 4.13 For all these reasons, the plan should now be ‘made’ in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended).

5.0 CONSULTATION

- 5.1 Consultation on the 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 In advance of the referendum, the council’s Decision Statement (setting out its response to the examiner’s recommendations) was published on the council’s website.
- 5.4 In advance of the referendum, all local government electors and eligible Non-Domestic Rate Payers in the Fitzrovia West Neighbourhood Area received a poll card which listed the date of the poll and where the poll would take place. All postal voters in the area received a postal vote pack prior to polling day. Information on the referendum was published on the council’s website. The notices published included Notices of Election and Notices of Poll.

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. As the Fitzrovia West Neighbourhood Plan has been through referendum, the council is eligible to apply for a grant from MHCLG of £30,000, and an application for this funding has already been made. This grant will cover the costs of appointing the independent examiner, and will also cover the costs of Electoral Services arranging the referendum.

- 6.3 Once the neighbourhood plan is ‘made’, under the Community Infrastructure Levy (CIL) Regulations, the neighbourhood portion of CIL in Fitzrovia West rises from 15% to 25%. This means that the Fitzrovia West Neighbourhood Forum will have a say on how 25% of CIL receipts generated by development granted in Fitzrovia West Neighbourhood Area should be spent. The increased neighbourhood portion of CIL only applies to developments granted in Fitzrovia West after the neighbourhood plan has been ‘made’. Furthermore, any spend of the neighbourhood portion of CIL will still need to be agreed with the council, who remain the charging authority.
- 6.4 As the Fitzrovia West Neighbourhood Plan will be used alongside the Mayor of London’s and the council’s own planning policies to determine planning applications within the Fitzrovia West Neighbourhood Area, its contents could also have an impact on future income streams for the council where the council is the applicant in any development proposal.

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, the Planning and Compulsory Purchase Act 2004, the Localism Act 2011, the Neighbourhood Planning Act 2017, and the Neighbourhood Planning (General) Regulations 2012 (as amended).
- 7.2 Section 38A (4) and (5) of the Planning and Compulsory Purchase Act allows the council to make the Fitzrovia West Neighbourhood Plan if more than half of those voting in one of the referendums have voted in favour of the plan, and to do so as soon as reasonably practicable after the referendum. Furthermore, the Neighbourhood Planning (General) Regulations 2012 (as amended) stipulate at regulation 18A that where a plan is made, it should be done so within 8 weeks of the referendum. Only where the making of the plan would breach or be incompatible with any EU obligations or other legal obligations, conventions or rights, does this duty not apply. No such issues have been raised during consultation or examination. Officers have also reviewed the plan with this in mind and have concluded that it does not raise any issues in this regard.

8.0 IMPACT ON THE ENVIRONMENT

- 8.1 The Fitzrovia West Neighbourhood Plan (see Appendix 1) 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.

9.0 HEALTH, WELLBEING IMPACT ASSESSMENT INCLUDING HEALTH AND SAFETY IMPLICATIONS

9.1 The Fitzrovia West Neighbourhood Plan (see Appendix 1) 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.

10.0 EQUALITIES IMPLICATIONS

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.

- 10.5 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,
Principal Policy Officer on 07890 380194 or email
mleoni@westminster.gov.uk**

APPENDICES

- 1 – Fitzrovia West Neighbourhood Plan (Adoption version)