

# Croydon Council

For General Release

<b>REPORT TO:</b>	<b>COUNCIL</b> <b>30 APRIL 2012</b>
<b>AGENDA ITEM NO:</b>	<b>15</b>
<b>SUBJECT:</b>	<b>Neighbourhood Planning (receipt, publication, consideration and determination of applications for designation of Neighbourhood Forums and Neighbourhood Areas) – Localism Act 2011</b>
<b>LEAD OFFICER:</b>	<b>Jon Rouse – Chief Executive</b>
<b>CABINET MEMBER:</b>	<b>Councillor Jason Perry – Cabinet Member for Planning, Transport and Sustainability</b>
<b>WARDS:</b>	<b>All</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> This report contributes to following corporate priorities. The ‘we are Croydon’ vision document states residents will feel empowered and motivated to get involved in shaping what happens locally, including taking on responsibility for managing their local area. Furthermore, objective four of the Corporate Plan (2011 – 2013) – EMPOWERING COMMUNITIES – states the aim of creating a fair society that enables people to have power to take decisions as well as come together to deliver solutions for themselves and their local community. It is considered that these priorities go to the heart of the Government’s intentions regarding the introduction of Neighbourhood Planning.	
<b>FINANCIAL IMPACT</b> It is considered that applications for Neighbourhood Forums and/or Areas can be contained within the 2012/13 budgets of the Planning Service.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> This is not a key decision.	

## **1. RECOMMENDATIONS**

### **That Council:**

- 1.1** Note the new provisions of the Localism Act relating to Neighbourhood Planning and those of the Neighbourhood Planning (General) Regulations 2012 as outlined in this report; and
- 1.2** Approve the delegation of performance of the functions for receipt, publication, consideration and determination of applications for designation of Neighbourhood Forums and Neighbourhood Areas under the provisions of the Localism Act 2011 and Neighbourhood Planning (General) Regulations 2012 to the Director of Planning and Building Control.

## **2. EXECUTIVE SUMMARY**

- 2.1** The Localism Act 2011 (“the Act”) received Royal Assent in November 2011, although much of the Act is not yet in force. The Government believes the Localism Act will help communities to become involved in enabling, shaping and promoting the growth and development that takes place in their local area through Neighbourhood Planning.
- 2.2** The supporting Neighbourhood Planning (General) Regulations 2012 (“the Regulations”) came into force on the 6 April 2012.
- 2.3** The neighbourhood planning regime is based upon communities setting up Neighbourhood Forums for their areas to influence planning within their neighbourhood. In order to facilitate this process, the Council is required to consider and approve applications for the establishment of Neighbourhood Forums and Neighbourhood Areas in accordance with the legislative framework set out in the body of this report. .
- 2.4** The purpose of this report is to ask Members to put in place measures to deal with applications for the establishment of Neighbourhood Forums and Neighbourhood Areas which may be received by the Council. The measures proposed by this report are the delegation of the functions for receipt, publication, consideration and determination of applications for designation of Neighbourhood Forums and Neighbourhood Areas under the provisions of the Localism Act 2011 and Neighbourhood Planning (General) Regulations 2012 to the Director of Planning and Building Control.
- 2.5** Members should be aware that further regulations in respect of Neighbourhood Planning are anticipated however they have not yet been published, but Members will be updated as necessary.
- 2.6** On 28 March, Corporate Services Committee approved interim arrangements to deal with applications for Neighbourhood Areas and Neighbourhood Forums

pending consideration of the matter by full Council on 30 April (background document 3).

### 3. DETAIL

3.1 The Act and Regulations provide the legislative framework for neighbourhood planning.

3.2 Within London, Neighbourhood Forums, once designated as such by the Council, are largely seen as the groups that will deliver neighbourhood planning. The introduction of neighbourhood planning through the Act introduces three new planning tools to neighbourhood forums:

- Neighbourhood Development Plans (NDPs)
- Neighbourhood Development Orders (NDOs)
- Community Right to Build Orders (CRBOs)

3.3 The neighbourhood planning tools are summarised briefly below to provide an overview for Members considering the recommendations in this report.

#### Neighbourhood Development Plans

3.4 Neighbourhood Forums, as qualifying bodies, are able to institute a process to make a Neighbourhood Development Plan (NDP). The NDP will set out policies in relation to the development and use of land in the whole or any part of a particular neighbourhood area. A brief overview of the NDP process is set out in the below diagram.



3.5 The NDP will be able to be adopted as a formal part of the Development Plan (thereby gaining the status of a 'Development Plan Document'). This means that planning decisions will have to be made in accordance with the

Neighbourhood Plan, (and other parts of the overall Development Plan), unless there are material considerations not to.

### Neighbourhood Development Orders

- 3.6 Neighbourhood development orders (NDOs) will be the means by which planning permission for specific types of development in a particular area may be granted. Only Neighbourhood Forums may make applications for such orders which pertain to their Neighbourhood Area. This could be either a particular development, or a particular class of development (for example retail or housing). A number of types of development will be excluded from NDOs. These include Nationally Significant Infrastructure Projects and development that would trigger an Environmental Impact Assessment.
- 3.7 The production of a NDO and approval process is similar to the approval process for an NDP and the onus on ensuring consultation and community engagement is almost entirely on the Neighbourhood Forum. As with the NDP there is a requirement for an independent examination of the NDO and a referendum. If more than half of those voting have voted in favour of the NDO, then it will come into force unless the Authority considers that the making of the order would breach or would otherwise be incompatible with, any EU obligation or any of the Convention Rights (within the meaning of the Human Rights Act 1998).

### Community Right to Build Orders

- 3.8 Community Right to Build Orders (CRBO) are a special type of NDO. Unlike NDO and NDP, any local community organisation (not just a Neighbourhood Forum) are able to create CRBOs. To be eligible to develop a CRBO at least half of a community organisation's members must live in the neighbourhood area. The organisation must also exist to further the economic, environmental and social well-being of the area in question, and may also be required to make provision that any profits made as a result of community right to build orders be distributed among the organisation's members.
- 3.9 CRBOs will be produced and adopted in the same way as NDOs.

### Neighbourhood Forums

- 3.10 In order to be approved by the Council as a Neighbourhood Forum, the Act requires that a proposed Neighbourhood Forum meets the following conditions:
- a) it is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area),
  - (b) its membership is open to—
    - (i) individuals who live in the neighbourhood area concerned,
    - (ii) individuals who work there (whether for businesses carried on there or otherwise), and

- (iii) individuals who are elected members of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,
  - (c) its membership includes a minimum of 21 individuals each of whom—
    - (i) lives in the neighbourhood area concerned,
    - (ii) works there (whether for a business carried on there or otherwise), or
    - (iii) is an elected member of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,
  - (d) it has a written constitution, and
  - (e) such other conditions as may be prescribed by the Secretary of State.
- 3.11 There is an obligation on the authority to make arrangements to ensure members of the public are aware of the times when organisations or bodies can make applications to be designated as neighbourhood forums for neighbourhood areas. This will include not only the initial applications but also if designations are withdrawn or when they cease to have effect after the 5 year period.
- 3.12 To assist the Neighbourhood Forum application process and ensure consistency in the submission and determination of Neighbourhood Forum applications the Council will require an application form to be completed which covers, among other things, the aspects set out in paragraph 3.10 above.

#### Neighbourhood Forum - Determination

- 3.13 As indicated previously, it is a responsibility of the Council to receive, publish, consider and determine applications for designation of Neighbourhood Forums. These functions comprise four stages which are set out below, and it is the performance of these four stages in respect of which the delegation requested in this report is sought.

##### Stage1 – Receipt

- 3.14 Ensuring that the application satisfies the criteria below:
- Contains the name of the proposed neighbourhood forum
  - Includes a copy of the written constitution of the proposed neighbourhood forum
  - Specifies the name of the relevant neighbourhood area and a map which identifies the area
  - Sets out the contact details of at least one member of the proposed neighbourhood forum to be made public under regulations 9 and 10, and
  - Is supported by a written statement explaining how the proposed neighbourhood forum meets the statutory provisions of section 61F(5) of the Town and Country Planning Act 1990.
- 3.15 This initial stage does not involve an assessment of the information included within the application, but ascertaining that the requisite information is present within the application and whether or not there is an existing neighbourhood forum for the area. If there is already an existing Neighbourhood Forum for the area and that designation has not expired or been withdrawn, a local planning

authority may decline to consider any neighbourhood forum application made in relation to that neighbourhood area (Regulation 11).

### Stage 2- Publicity

- 3.16 As soon as possible after receiving a neighbourhood forum application, which the local planning authority do not decline to consider under Regulation 11 above, a local planning authority must publish the following on their website and in such other manner as they consider is likely to bring the application to the attention of people who live, work or carry on business in the area to which the application relates—
- (a) a copy of the application;
  - (b) a statement that if a designation is made no other organisation or body may be designated for that neighbourhood area until that designation expires or is withdrawn;
  - (c) details of how to make representations; and
  - (d) the date by which those representations must be received, being not less than 6 weeks from the date on which the application is first publicised.

### Stage 3 - Consideration and determination of applications for designation.

- 3.17 This stage may not commence within the 6 week period following the date on which the application is publicised under Stage 2.
- 3.18 In making the determination the planning authority will need to consider the representations received in response to Stage 2 publicity, but must have regard to the desirability of designating an organisation or body:
- a. Which has secured (or taken reasonable steps to secure) that its membership includes at least one individual falling within each of the three categories of membership (resident, those who work in the area and elected members),
  - b. whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community;
  - c. whose purpose reflects the character of the area.
- 3.19 The Authority may only designate one organisation or body as a Neighbourhood Forum for each neighbourhood area and the designation ceases to have effect at the end of the period of 5 years beginning with the date on which the designation is made.
- 3.20 In reaching a decision regarding designation of a neighbourhood forum, the authority needs to prepare reasons for its decision. If the decision is not to designate, these reasons need to be published as part of the refusal notice referred to below. It is considered good practice for any decision to be recorded in writing along with reasons, regardless of whether the decision is to grant designation or to refuse it.

## Stage 4 - Publicising a designation of a neighbourhood forum

### Approval

- 3.21 As soon as possible after designating a neighbourhood forum, a local planning authority must publish the following on their website and in such other manner as they consider is likely to bring the designation to the attention of people who live, work or carry on business in the neighbourhood area—
- (a) the name of the neighbourhood forum;
  - (b) a copy of the written constitution of the neighbourhood forum;
  - (c) the name of the neighbourhood area to which the designation relates; and
  - (d) contact details for at least one member of the neighbourhood forum.

### Refusal

- 3.22 As soon as possible after deciding to refuse to designate a neighbourhood forum, a local planning authority must publish the following on their website and in such other manner as they consider is likely to bring the decision to the attention of people who live, work or carry on business in the neighbourhood area—
- (a) a statement setting out the decision and their reasons for making that decision (“the refusal statement”); and
  - (b) details of where and when the refusal statement may be inspected.

### Withdrawal of Designation

- 3.23 The Authority is also able to withdraw a designation as neighbourhood forum if the authority considers that the organisation is no longer meeting the conditions by reference to which it was designated or any other criteria which the Authority was required to have regard to in making the designation.
- 3.24 It is possible for a neighbourhood forum to voluntarily withdraw their designation as a neighbourhood forum. To do so, the neighbourhood forum gives notice to a local planning authority that it no longer wishes to be designated as the neighbourhood forum for a neighbourhood area, whereafter the local planning authority must withdraw the designation of the neighbourhood forum.
- 3.25 As soon as possible after withdrawing the designation of a neighbourhood forum a local planning authority must publish the following on their website and in such other manner as they consider is likely to bring the withdrawal of the designation to the attention of people who live, work or carry on business in the neighbourhood area—
- (a) a statement setting out details of the withdrawal (“the withdrawal statement”); and
  - (b) details of where and when the withdrawal statement may be inspected.

### Determination Period

- 3.26 There is no time period currently specified for the determination of applications for designation as a Neighbourhood Forum, other than the requirements around the 6 week period specified above.

### Neighbourhood Area - process for consideration and determination:

- 3.27 The power to designate a neighbourhood area is exercisable by the Council only where—
- (a) a relevant body (which for the Council's current purposes will be a Neighbourhood Forum) has applied to the authority for an area specified in the application to be designated by the authority as a neighbourhood area, and
  - (b) the authority are determining the application (but see subsection (5) set out in stage 3 below).
- 3.28 As with neighborhood forum applications, there are four stages which are set out below, and it is the performance of these four stages in respect of which the delegation requested in this report is sought.

#### Stage 1: Is the Application for designation of a neighbourhood area valid

- 3.29 The application must comply with the following:
- (1) It is from a relevant body
  - (2) The application includes—
    - (a) a map which identifies the area to which the area application relates;
    - (b) a statement explaining why this area is considered appropriate to be designated as a neighbourhood area; and
    - (c) a statement that the organisation or body making the area application is a relevant body for the purposes of section 61G of the 1990 Act.
- 3.30 The Council may decline to consider an area application if the relevant body has already made an area application and a decision has not yet been made on that application.

#### Stage 2: Publicity

- 3.31 As soon as possible after receiving an area application from a relevant body, the Council must publicise the following on their website and in such other manner as they consider is likely to bring the area application to the attention of people who live, work or carry on business in the area to which the area application relates—
- (a) a copy of the area application;
  - (b) details of how to make representations; and
  - (c) the date by which those representations must be received, being not less than 6 weeks from the date on which the area application is first publicised.

Stage 3: Consideration of the application, representations and determination, with reasons.

- 3.32 This stage also requires a consideration as to whether all or part of the area to which the application relates should be designated as a business area under the provisions of Section 61H of the Town and Country Planning Act 1990 and any regulations which may be published for these purposes. An area may only be designated as a business area if that area is wholly or predominantly business in nature. In considering this aspect, regard will need to be had to regulations, yet to be published, which deal with designation as a business area.
- 3.33 In addition it must be noted that, if
- (a) a valid application is made to the authority,
  - (b) some or all of the specified area has not been designated as a neighbourhood area, and
  - (c) the authority *refuse* the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area,
- 3.34 The authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas (Section 61G(5) Town and Country Planning 1990).

Stage 4: Publicising a designation of a neighbourhood area etc

- 3.35 Where the designation is approved: as soon as possible after designating a neighbourhood area, a local planning authority must publish the following on their website and in such other manner as they consider is likely to bring the designation to the attention of people who live, work or carry on business in the neighbourhood area—
- (a) the name of the neighbourhood area;
  - (b) a map which identifies the area; and
  - (c) the name of the relevant body who applied for the designation.
- 3.36 Where the designation is refused: as soon as possible after deciding to refuse to designate a neighbourhood area, a local planning authority must publish the following on their website and in such other manner as they consider is likely to bring the refusal to the attention of people who live, work or carry on business in the neighbourhood area—
- (a) a document setting out the decision and a statement of their reasons for making that decision (“the decision document”); and
  - (b) details of where and when the decision document may be inspected

Reasons for Recommendations

- 3.37 This report seeks approval to delegate these functions to the Director of Planning and Building Control. Approval will enable the Council to fulfil its functions in accordance with the Act and Regulations.

#### **4. CONSULTATION**

- 4.1 No consultation has been undertaken regarding this matter. However, the Corporate Services Committee report was available on the Council's website and in advance of the 6 April (when the Neighbourhood Planning Regulations came into force) under the Neighbourhood Planning section of the Council's website guidance was made available regarding the various neighbourhood planning tools and guidance regarding how an application for a Neighbourhood Forum and Neighbourhood Area can be made.

#### **5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 5.1 With regard to solely the receipt, publication, consideration and determination of applications for designation of Neighbourhood Forums and Neighbourhood Areas it is considered these costs can be contained within the 2012/13 budget.

Approved by: Richard Simpson, Director of Finance and Deputy Section 151 Officer

#### **6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER**

- 6.1 The Solicitor to the Council comments that the legislative regime set up by the Localism Act 2011 read with Neighbourhood Planning (General) Regulations 2012 set out the considerations which must be taken into account in considering and granting applications for Neighbourhood Forums and Neighbourhood Areas which are set out within the body of the report. The legislation also specifies the publication requirements which are similarly set out in the report above.

Approved by: Jessica Stockton, Corporate Solicitor for and on behalf of the Council Solicitor & Director of Democratic & Legal Services

#### **7. HUMAN RESOURCES IMPACT**

- 7.1 With regard to solely the receipt, publication, consideration and determination of applications for designation of Neighbourhood Forums and Neighbourhood Areas it is considered there are no significant resource implications.

Approved by: Chris Baldwin on behalf of the Director of Workforce, Equality & Community Relations

#### **8. EQUALITIES IMPACT**

- 8.1 As this report relates only to the determination of applications for Neighbourhood Forums and Neighbourhood Areas and related functions it is considered there are no equalities impact implications.

## **9. ENVIRONMENTAL IMPACT**

9.1 As this report relates only to the determination of applications for Neighbourhood Forums and Neighbourhood Areas and related functions it is considered there are no environmental implications. That said, the provisions introduced under Neighbourhood Planning will clearly have environmental implications and these will have to be assessed as any of these provisions are brought into force by Neighbourhood Forums.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

10.1 As this report relates only to the determination of applications for Neighbourhood Forums and Neighbourhood Areas and related functions it is considered there are no crime and disorder reduction implications.

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### **CONTACT OFFICER:**

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### **BACKGROUND DOCUMENTS**

- Localism Act 2011
- The Neighbourhood Planning (General) Regulations 2012
- Neighbourhood Planning (receipt, publication, consideration and determination of applications for designation of Neighbourhood Forums and Neighbourhood Areas) – Localism Act 2011 – Corporate Services Committee Report – 28 March 2012

Background document 1 -

<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

Background document 2 –

<http://www.legislation.gov.uk/uksi/2012/637/contents/made>

Background document 3 -

<http://www.croydon.gov.uk/contents/documents/meetings/547800/2012/2012-03-28/csc20120328neighbourhoodplanning.pdf>