

Report for: Cabinet – 14 February 2017

Item number: 16

Title: Update of the Statement of Community Involvement

Report

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Ward(s) affected: N/A

Report for Key/

Non Key Decision: Key

1 Describe the issue under consideration

- 1.1 The Statement of Community Involvement (SCI) sets out how the Council's Planning Service will involve local residents, local businesses and other key organisations and stakeholders in the plan-making process and in the determination of planning applications.
- 1.2 Haringey's SCI was initially adopted in 2008, updated with minor amendments in 2011 and now requires a further update to take account of changes in planning legislation and to reflect current practices in community engagement, including greater use of electronic communications such as email and social media.

2 Cabinet member introduction

- 2.1 The Statement of Community Involvement (SCI) sets out how and when the community and other stakeholders will be consulted on the preparation and revision of the Local Plan documents and how the community will be consulted on planning applications. The SCI seeks to ensure the active, meaningful and continued involvement of local communities and stakeholders throughout the process.
- 2.2 Planning shapes the places where people live and work, so it is right that people should be able to take an active part in the process. Community involvement is vitally important to planning. It is also important that the community can be involved from the beginning of the process, identifying issues and debating options from the earliest stages.

- 2.3 We aim to involve the whole community in the planning process to ensure the planning policy framework and the outcomes of planning decisions reflect the aspirations of the widest possible range of people, communities, organisations and businesses.

3 Recommendations

- 3.1 That Cabinet note the outcomes of the consultation of the updated SCI, carried out in 2015;
- 3.2 That Cabinet approve the changes made to the document as a result of the consultation, as well as the factual and legislative changes; and
- 3.3 That Cabinet approves the updated SCI for adoption.

4 Reasons for decision

- 4.1 All local planning authorities are required under section 18(1) of the Planning and Compulsory Purchase Act 2004 to prepare and adopt a Statement of Community Involvement (SCI).
- 4.2 Approval of the SCI will ensure that the Council meets its statutory obligations for engaging with the community and statutory stakeholders in plan making and determining planning applications.

5 Alternative options considered

- 5.1 The Planning and Compulsory Purchase Act 2004 ("the 2004 Act") requires local planning authorities to prepare and adopt a Statement of Community Involvement. As such the option to do nothing is discounted.

6 Background information

- 6.1 Haringey's SCI, initially adopted in 2008, was updated in 2011 with minor amendments, and now requires a further update to take account of changes in planning legislation; to reflect current practices in community engagement, including greater use of electronic communications such as email and social media; and to deliver the Planning Service in a more efficient manner.
- 6.2 The latest legislative changes stem mostly from the enactment of the Localism Act 2011, which amended relevant provisions of the 2004 Act and the Town and Country Planning Act 1990 ("the 1990 Act") relating to public participation. Amongst other things, those amendments are intended to speed up both plan-making and the time taken in determining planning applications. In particular, it aims to simplify the plan-making process by reducing the number of informal consultation stages and reduce the status of certain types of planning documents making them less onerous to produce or update.
- 6.3 In respect of applications for planning permission, section 122 of the Localism Act 2011 inserts sections 61W to 61Y into Part III of the 1990 Act, which impose a requirement in certain circumstances to carry out pre-application consultation.

The new section 61W, requires any person who intends to apply for planning permission for development of a prescribed description first to consult the local community and any specified persons, so that they may collaborate or comment. The prospective developer must have regard to any advice that the local planning authority may have provided. The new section 61X requires the developer to have regard to any comments or responses generated by the consultation undertaken in accordance with section 61W, when deciding whether to make any changes to their proposals before submitting their planning applications. These legislative changes shift the responsibility of publicising certain development proposals from the local planning authority to those who will benefit from a grant of planning permission. The new Section 61Y enables the Secretary of State to set out further provisions as to how the consultation required under section 61W should be undertaken in practice. Amendments to section 62 of the 1990 Act provides that an account of the consultation undertaken in accordance with section 61W must accompany any planning application for development to which the new duty applies, in order to make it valid. Section 5.7 of the draft SCI addresses 'Pre-application Consultation' and, in accordance with national planning policy guidance (NPPF, para. 189), where appropriate, the Council will encourage any applicants who are not already required to do so by law to engage with the local community before submitting their applications (see draft SCI, para. 5.7.2).

- 6.4 In addition, the Localism Act 2011 introduced measures to shift new rights and planning powers to local authorities and local communities. These changes include a duty on all planning bodies to co-operate on cross boundary planning matters in the preparation of local plans, the ability to introduce a levy on development to help pay for local infrastructure, and the ability for local communities to prepare their own plan for their own local neighbourhood area.

Proposed changes to the SCI

- 6.5 In that context, one of the main changes in the updated SCI is that the scope of consultation on planning applications is proposed be changed to be aligned with the statutory requirements set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("the DMPO"). These require either a letter to be sent to neighbours or a site notice to be placed near the site. Specifically, it is proposed that we will no longer send letters to neighbours notifying them of the submission of a planning application but, rather, we will display a site notice at each site. It is clear from the DMPO 2015 that the Secretary of State considers that this approach is adequate to ensure reasonable notice of a planning application is given to those affected by the determination of a planning application. Notification to local community groups and stakeholder groups will also be sent by email only, which is already the method used for the majority of these.
- 6.6 In 2015/16 the Council sent 161,309 letters giving notice of the submission of a planning application. We received 8,405 representations on planning applications, which equates to a 5% response rate. As such the replacement of sending letters with placing site notices at each site is considered to be a more efficient and effective means of publicising planning applications.

- 6.7 We are committed to ensuring that the changes in our consultation methods continue to meet the aims and objectives of ensuring meaningful community engagement. This is detailed in Section 8, paragraphs 8.18 – 8.23 below, and the Equalities Impact Assessment (Appendix C).
- 6.8 In addition to our statutory obligations we are also committed to introducing alternative methods for sending notifications of planning applications and the procedure for making representations (e.g., by email and telephone). To this end the Planning Service is undertaking an update of its database of community contacts with the ultimate aim of linking this to the Council's geographic information system (GIS) and being able to email contacts with planning application notifications in their area. The Council is also centrally updating its database and ultimately it is envisaged that residents and community groups will be able to opt-in to receive notifications of planning applications. The process of updating the database has already resulted in an increase in the number of residents opting to receive information about the planning service. In addition, local residents already have the option to use the 'Notiz' smart phone app to be informed of planning applications in their local area. The Notiz app will be actively marketed on the Planning website and in emails from members of the planning service and at community meetings.
- 6.9 Notification information in emails, website and site notices, and letters (where relevant) will be presented in an easy to read format using plain English, and site notices will be prominently positioned. Members of the public can contact the Planning Customer Care Team or the Planning Policy Team for further information on any current or upcoming consultation, or Planning query.
- 6.10 To ensure that residents are informed of these changes, we will place notices on the Council's website and on planning consultation letters before they are phased out, as well as by email to our database of community contacts. These letters and notices will also promote the Notiz app and encourage local residents and groups to register their interest in receiving notification of planning applications. The change is intended to be implemented on 1 June 2017.

Summary of consultation on the update of the Statement of Community Involvement

- 6.11 The draft SCI Update was the subject of public consultation for eight weeks from 10 August to 2 October 2015. The draft SCI Update, approved for consultation at Cabinet 14 July 2015, set out the purpose for the update, the changes since the previous update, and details of how to respond to the consultation.
- 6.12 The SCI was considered by Regulatory Committee on 2 July when it was proposed to note the draft. The changes to the SCI since the consultation are not considered to be significant and therefore it is not proposed to take the SCI back to Regulatory Committee. The matters that they raised have been addressed.
- 6.13 The aim of the consultation was to seek the views and comments of the public and stakeholders on the proposed updates to enable the preparation of the final version of the document.

- 6.14 The consultation involved press notices, a dedicated webpage on the Haringey website, email and letter notification to the planning consultation database, Twitter campaign, hard copies and relevant information in all public libraries and Civic Centre. In addition, a public consultation event was held on the 14 September 2015 in the Civic Centre.
- 6.15 Public consultation on the document was carried out in accordance with the Council's adopted Statement of Community Involvement (2011). This included:
- Notification by letter/e-mail on 10th August 2015 to over 16,000 individuals and organisations registered on the planning consultation database;
 - Public notice placed in the local newspaper on 14th August 2015;
 - The SCI website was updated to include the relevant information relating to the consultation and the document;
 - Reference copies of the document were made available in all public libraries, at the Civic Centre and Planning Reception at River Park House, and on the Council's website;
 - Tweets from Haringey Twitter account; and
 - A public meeting to discuss the consultation held on 14th September 2015.
- 6.16 There was a relatively low response rate to the consultation, with only eight written responses and seven attendees at the public event.
- 6.17 The written responses came from Historic England, Natural England, Thames Water, Transport for London, Highways England, Kingsley Park Residents Association, Highgate CAAC, and Highgate Society.
- 6.18 The consultation outcomes are set out in detail within the attached Consultation Statement (Appendix A). The main issues raised in the responses related to consultation with the public on planning applications
- 6.19 The main issues raised in relation to the consultation were the need for better communication and feedback. Suggestions were made as how to improve the Council's consultation and engagement methodology, these are set out in the Consultation Statement (Appendix A).
- 6.20 Where appropriate, amendments have been made to the draft SCI Update in response to representations made in response to public consultation, including factual updates, improved referencing and clearer presentation of information.
- 6.21 On 10 December 2015, the Council was given notice of a local resident's intention to apply for permission to bring a claim for judicial review challenging the lawfulness of the public consultation on the SCI Update. The local resident, who had not responded to the consultation, issued a claim for judicial review in January 2016, relying upon two grounds, namely that the public consultation (i) failed to provide sufficient information to enable consultees to make an informed and intelligible response and instead conceals the significance of the changes proposed; and (ii) failed to refer to, explore or explain other options.

- 6.22 The local resident's application for permission to bring his claim for judicial review was refused by way of an Order of the High Court dated 23 February 2016. The Judge's reasons for refusing to grant permission described the Claim as "... *unarguable, misconceived and, if it is appropriate to challenge the form and content of the SCI at this stage, well out of time*". Nevertheless, the local resident has indicated that it is likely that he will mount a further challenge when the revised SCI is adopted by Cabinet. (The Judge's reasons for refusing to grant permission are discussed in further detail within Section 8 (below)).

7 Contribution to strategic outcomes

- 7.1 Planning is integral to our neighbourhoods, and it's important that the local community and businesses become involved at an early stage and throughout the planning process to help inform how Haringey and the places within it might evolve and develop over time.
- 7.2 The planning process, including community involvement, aligns with our Corporate Plan vision and objectives to actively manage and drive growth and development across the borough, specifically:
- **Priority 3 (Clean and Safe Environment)** by ensuring protection of Haringey's natural environment and, where possible, increase and enhance provision, public access and use, where appropriate.
 - **Priority 4 (Growth)** by maximising opportunities for residential and commercial growth and development targeted at areas of the Borough that can accommodate change and have the capacity to do so.
 - **Priority 5 (Housing)** by enabling the delivery of new homes and ensuring such growth and development results in a high quality and attractive residential amenity.

8 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

- 8.1 There is a Priority 4 saving of £50k to be achieved for 2016/17 which was to be delivered by the cessation of postal letters for planning application notices. This saving will not now be achieved due to the delay in the adoption of the SCI following the failed JR challenge. The full saving is however expected to be achieved for 2017/18 if the SCI is adopted.
- 8.2 The report mentions the possibility of linking the community contacts database with the Council's GIS system. There is no specific funding identified for this project but it is anticipated that capability within existing systems can be maximised within existing resources. Any further upgrade would need to be scoped within any future Council system development plans.

Legal

- 8.3 Section 18(1) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), the local planning authority ("LPA") must prepare and adopt a SCI as part of its local development scheme ("LDS") for its area. The SCI is a local development document ("LDD") (section 18(3)) but must not be specified as a development plan document ("DPD") in the LDS (section 18(3A)).
- 8.4 Pursuant to section 23 (1) of the 2004 Act, the LPA may adopt a LDD as originally prepared, or as modified to take account of (i) any representations made in relation to the document, (ii) any other matter they think is relevant. There is no requirement to submit a LDD to the Secretary of State for independent examination.
- 8.5 The provisions of section 18, requiring the preparation and adoption of a SCI, have been reduced in their scope since the 2004 Act was enacted. Amendments to section 18 made by the Localism Act 2011 abolished the detailed regulation of the SCI and the need for public examination.
- 8.6 As presently enacted, section 18(2) requires a statement of the local planning authority's policy as to the involvement of *"persons who appear to the authority to have an interest in matters relating to development in their area"* in the exercise of the authority's plan-making functions under sections 19, 26 and 28 of the 2004 Act and the determination of planning applications under Part III of the Town and Country Planning Act 1990 Act. The scope of the SCI does not include functions under the 1990 Act relating to neighbourhood development orders (including any function under any of sections 61F to 61H of the 1990 Act).
- 8.7 An application for planning permission must be publicised by the LPA as prescribed by the Article 15 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("the DMPO").
- 8.8 Where an application for planning permission: is an environmental impact assessment accompanied by an environmental statement; is not in accordance with development plan policy; or would affect a public right of way (under the Wildlife and Countryside Act 1981) the application must be publicised by giving notice by:
- (a) site display in at least one place near the application site for not less than 21 days; and
 - (b) publication of the notice in a newspaper circulating in the locality.
- 8.9 Where an application for planning permission is for "major development" (e.g. waste development or provision of 10 or more dwellings/site is of 0.5 hectares and not known if providing 10 dwellings or more or provision of building(s) with 1,000 sqm of floorspace or site is of a hectare or more) the application must be publicised by giving notice by:
- (a) site display in at least one place near the application site for not less than 21 days or by serving notice on any adjoining owner or occupier; and
 - (b) publication of the notice in a newspaper circulating in the locality.

- 8.10 Where a planning application is for any other development the application must be publicised by giving notice by site display in at least one place near the application site for not less than 21 days or by serving notice on any adjoining owner or occupier.
- 8.11 Therefore, in publicising any application for planning permission, the Council would be acting lawfully by giving notice by site display in at least one place on or near the application site for a period of not less than 21 days, provided that in cases where an application involves development described within paragraphs 8.7 and 8.8 (above), a notice would also be publicised in a newspaper circulation in the locality.
- 8.12 When refusing the local resident permission to proceed with his judicial review claim challenging the lawfulness of the SCI Update public consultation, the Judge observed that: "Having read and considered the draft SCI, the contention that the Claimant was unable to comprehend its meaning is not credible, and the pre-action protocol letter and Grounds contain other quite unarguable points. The SCI is written in straightforward language. He did not need a document setting out the changes from the 2007 document to be able to grasp it or its contents. ... The claim that there should have been (and was not) a sufficient explanation of the purpose of an SCI, or how it would affect planning decisions in the Borough, when the SCI does exactly that, and at some length, is not arguable."
- 8.13 In response to the judicial review ground of challenge that the public consultation failed to refer to, explore or explain other options, the Judge observed that: "Not all consultations are alike, and it is wrong to seek to apply the template for one (e.g. the CTB consultation in *Moseley*) to all other types of consultation". The reference to 'Moseley' is the decision of the Supreme Court in *R (Moseley) v London Borough of Haringey* [2014] UKSC 56; [2014] 1 WLR 3947, which concerned a successful legal challenge to the Council's 2012 public consultation on its proposals to replace council tax benefit ("CTB") with a council tax reduction scheme ("CTRS"). In that case, the Supreme Court held that pursuant to the statutory duty to consult on its proposed CTRS, with which the general public could not be expected to be familiar, the consultation document itself should have contained a brief outline of the alternative options and the reasons for their rejection.
- 8.14 The Judge's reasons for refusing permission to bring the judicial review claim were made in the context of the Council's Summary Grounds for Resisting the Claim, which included the submission that although it is well established that the needs of fairness will sometimes include a requirement to address alternatives, much will depend upon the circumstance's and context of the consultation, but that in the present case, it was not necessary to consider alternatives in the prescriptive manner asserted in the judicial review claim.
- 8.15 Moreover, the information provided in the SCI update consultation documents was sufficient and there is no sound basis for contending that consultees were in any sense misled into believing that there was no alternative but to agree to the SCI. To the contrary, the consultation documents specifically asked consultees to suggest alternatives for the Council to consider and, as a matter

of fact, the Council's Cabinet considered the alternative of not making the proposed changes to the adopted SCI when it approved the draft SCI on 14 July 2015, which, for the reasons explained in the Cabinet report prepared by officers, was not considered to be a reasonable alternative.

- 8.16 In accordance with section 9D of the Local Government Act 2000 (as amended) and the provisions of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended), the decision to approve and adopt the updated SCI is a function that must be discharged by the Council's executive (i.e., Cabinet).
- 8.17 In addition to this section, further legal comments are included within the text of this report.

Equality

- 8.18 The Council is subject to the Public Sector Equality Duty under the Equality Act 2010 to have due regard to:
- Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
 - advance equality of opportunity between people who share those protected characteristics and people who do not;
 - foster good relations between people who share those characteristics and people who do not
- 8.19 An equality impact assessment (EqIA) (attached in Appendix C) has been undertaken to assess how the proposed changes to the Statement of Community Involvement (SCI) will impact upon different groups, including those with protected characteristics.
- 8.20 The EqIA finds that most residents are digitally active and should therefore be able to switch to receiving email and phone notifications on planning applications as an alternative to the current system of sending letters in the post. The EqIA does however highlight risks that small minorities of residents (including those with visual impairments, limited mobility, not digitally enabled or those with limited English) may have difficulty accessing site, email or phone planning notifications if reasonable adjustments are not made. We will therefore ensure that future planning notifications are presented in an easy to read format using plain English, and that the physical site notifications are always displayed prominently.
- 8.21 To ensure that residents are informed of the upcoming changes we will place notices on Haringey Council's website and on planning consultation letters before they are phased out, as well as by email to our database of community contacts.

- 8.22 To ensure that the Development Management Forums ensure every opportunity for people to access the consultation events, the format of the meetings will be required to meet the standards set out in the Council's Planning Protocol 2016. This includes ensuring that the forums are hosted at venues and times of the day most accessible for residents.
- 8.23 The SCI will be monitored on a regular basis, including the ongoing strength of engagement with different groups of residents. This will ensure that we identify and make any necessary changes and further develop publicity methods to address any identified gaps in access to notifications.

9 Use of Appendices

- Appendix A: Statement of Community Involvement Consultation Statement
- Appendix B: Statement of Community Involvement 2017
- Appendix C: SCI Equalities Impact Assessment (EqIA)

10 Local Government (Access to Information) Act 1985

- Haringey Statement of Community Involvement (2011)
- Planning and Compulsory Purchase Act 2004 (as amended)
- Town and Country Planning Act 1990 (as amended)
- Localism Act (2011)
- Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)
- National Planning Policy Framework (2012)
- National Planning Policy Guidance