



TITLE OF REPORT

PROCEDURAL CHANGES TO CONSERVATION AREA REVIEW PROGRAMME

KEY DECISION NO. NH Q67

CABINET MEETING DATE 29 June 2020	CLASSIFICATION: Open
WARD(S) AFFECTED All Wards	
CABINET MEMBER Cllr Guy Nicholson Planning, Culture & Inclusive Economy	
KEY DECISION Yes	
GROUP DIRECTOR Ajman Ali, Acting Group Director, Neighbourhoods & Housing	

1. CABINET MEMBER'S INTRODUCTION

- 1.1** Since the Civic Amenities Act of 1967, Hackney has had a long history of designating Conservation Areas in order to protect and manage the special character and appearance of identified neighbourhoods in the borough. The first designations took place in 1969 and since then, a total of 31 conservation areas have been designated in the borough.
- 1.2** Hackney Council has a statutory duty to regularly review all existing conservation areas in addition to assessing neighbourhoods for their suitability for designation as new conservation areas. In addition to the statutory duty, the Mayor's 2019 - 2022 manifesto sets a clear commitment for the Council to deliver an ambitious programme of Conservation Area reviews and designations.
- 1.3** In order to provide clarity, streamline due process and maximise capacity of the service area, Conservation & Urban Design, and to deliver the programme; the Council is proposing to review the consultation and designation procedures so as to make better use of resources and increase service outputs.
- 1.4** The proposed changes will allow the Council to fulfil its statutory duties whilst enabling the Conservation Area Review Programme to run more efficiently. These changes seek to adjust the procedures for this work. Cabinet will continue to make the decision to designate a Conservation Area, however the strategic lead for items within the Conservation Area Review Programme will be undertaken by the Head of Planning following consultation with the Lead Member for Planning.
- 1.5** I commend this report to Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1** The Council has an ongoing statutory duty to review its conservation areas and to determine whether any parts or further parts of their area should be designated as conservation areas.
- 2.2** This report seeks approval for revised procedures in the review and designation of conservation areas in the borough. The changes relate to how proposals are reported to and adopted by Cabinet and the length of public consultation that takes place with key stakeholders.
- 2.3** The proposal is coming forward now following work undertaken for the Council's 2017 Conservation Areas Review Study (CARS) and the proposed procedural changes will facilitate a more efficient running of the programme.

3. BACKGROUND

- 3.1 The Council undertook a borough wide review of its existing and potential conservation areas in the 2017 CARS document, which identified several workstreams for ongoing review and designation.
- 3.2 The CARS proposes ongoing review of existing conservation areas and the designation of a further 18 potential conservation areas. The Council sets a programme from year to year in order to identify priorities for designation and review and areas that are under particular threat from inappropriate change are prioritised.
- 3.3 Based on current resources and budgets, the review of all existing conservation areas and designation of all potential conservation areas identified in the CARS will take until 2030 at the very earliest. The Council has therefore looked at ways to streamline the process to make it as efficient as possible whilst still fulfilling its statutory duties and adhering to current legislation.

4. **RECOMMENDATION**

4.1 **Cabinet is recommended to agree that:**

- i. **The formulation of and public consultation on items relating to the Council's Conservation Area Review Programme may be commenced by the Head of Planning following consultation with the Lead Member for Planning.**
- ii. **The standard procedure for proposals to designate, extend or review items relating to the Council's Conservation Area Review Programme shall include a consultation period of 28 days.**

5. **REASONS FOR DECISION**

- 5.1 This decision is required in order to enable the Council's ongoing Conservation Area Review Programme to be carried out more efficiently and to increase work outputs.
- 5.2 This decision is required in order to protect trees, open spaces and buildings within proposed conservation areas from demolition under the Prior Approval process.
- 5.3 This decision is required to ensure that there is clarity on the revised consultation procedure and that the justification is clearly set out.

6. **KEY CHANGES**

SCHEME OF DELEGATION

- 6.1 Under the current procedure, conservation area proposals are taken to Cabinet for approval to consult and then taken back again post-consultation for adoption.

However, under the Mayor's Scheme of Delegation, it is only the decision to designate a conservation area proposals that needs to be made by the Mayor and Cabinet and therefore taking items twice is an unnecessary extra step.

- 6.2** In order to address this, it is proposed to only take conservation area proposals to Cabinet for adoption. This will streamline the Cabinet sign-off process and increase work outputs.
- 6.3** To ensure transparency and member involvement, in formulating proposals, the Conservation, Urban Design & Sustainability (CUDS) Team will liaise with the Lead Member for Planning, Culture and Inclusive Economy (currently Cllr Guy Nicholson). Proposals will also be discussed with the relevant Ward Members.
- 6.4** Additionally, the Council will endeavour to engage early with local amenity groups, such as the CAACs and Hackney Society in the formulation of proposals, including carrying out walkabouts to identify boundaries and key features.
- 6.5** Following public consultation, proposals will be taken to Cabinet for designation as is currently the case.

PUBLIC CONSULTATION PERIOD

- 6.6** There is no statutory duty to undertake public consultation prior to the designation or extension of conservation areas, nor is it promised in the Council's Statement of Community Involvement. However, it is Hackney's normal practice to consult on proposed new or extended conservation areas and conservation area appraisals that have been adopted following public consultation carry greater weight in decision making.
- 6.7** Under the current procedure, Hackney carries out public consultation with stakeholders for six weeks (42 days). However, this is considered excessive for a non-statutory consultation and also increases the risk of premature demolition within proposed Conservation Areas as permitted development. As things stand, notification of the proposal to introduce heritage controls could trigger an owner of a building within a proposed conservation area to apply for and receive prior approval for permitted development (such as demolition, which requires a Council determination within 28 days), before officers have been able to present the proposed conservation area to Cabinet.
- 6.8** In order to address this, it is proposed to reduce the consultation period to 4 weeks (28 days). All owner/occupiers within the proposed area will continue to be notified of the proposal by way of site notices, hand delivered and/or posted letters and online listing of the proposal on the Council's website.
- 6.9** A 28 day consultation allows sufficient time for stakeholders to consider and respond to proposals and the Council will continue to carry out public drop-in sessions or meetings during the consultation period in line with current legislation requirements. A 28 day period is not inconsistent with guidelines prepared by Historic England. The Council will have the discretion to consider all comments received up until the time a decision is made as far as reasonably possible (as is

the case with planning applications), even if the comments are received after the advertised 28 day period.

- 6.10** In order to reduce the threat of demolition of buildings within proposed Conservation Areas as permitted development, it is proposed that the standard program for public consultations will be to commence new consultations at least 35 days prior to a Cabinet meeting date. This will provide officers with a period of a minimum of 7 days following the conclusion of the consultation to carefully consider all responses and report the outcome to Cabinet. In very exceptional circumstances, there may be cause to reduce the time period for consultation even further, however strong justification will need to be provided.
- 6.11** To enhance the consideration given to representations received during a consultation, officers will record and consider responses on a rolling basis during the consultation period as they come in, so that analysis of as many responses as possible can be reported on in the materials provided to Cabinet in advance of a meeting. Where a report to Cabinet is prepared before a consultation period has ended, the officer's report should identify that further responses to the item may yet be received and then subsequently reported on at the Cabinet meeting. If this situation arises, it will be necessary to specifically address Cabinet on whether any further responses received would cause the report's recommendation to be changed or amended.

7. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 7.1** The option of doing nothing was rejected as it would negatively impact the length of time it takes to deliver the Council's Conservation Area Review Programme and would put heritage buildings that are identified as contributing positively to an area under threat.
- 7.2** Consideration was given to moving towards a practice of carrying out public consultation post designation in order to give immediate protection to the historic environment. However, this was rejected because it would generally be contrary to the principles of lawful and genuine consultation.
- 7.3** Consideration was given to reducing the public consultation period from less than 6 weeks but more than 28 days. However, this was rejected as it would increase the demolition threat under the Prior Approval process. Consideration was also given to a consultation period of shorter than 28 days. However, the 4 week period was considered to strike an appropriate balance that improves the efficiency of the Conservation Area Review Programme but is not a significant departure from past practice.
- 7.4** Consideration was given to continuing to request agreement of Cabinet to commence consultation on items relating to the Council's Conservation Area Review Programme. However, this was rejected because removing an unnecessary extra

step in the process and reducing the number of items that are taken to Cabinet (where possible) is preferred.

8. POLICY CONTEXT

- 8.1** Under the National Planning Policy Framework (NPPF) 2019, conservation areas are classed as designated heritage assets. The NPPF requires local planning authorities (LPAs) to set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so, LPAs should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.
- 8.2** The proposal aligns with regional heritage policies in the London Plan and local policies, which seek to preserve and enhance Hackney's heritage assets. The proposal supports the Core Strategy (2010) policies 24 (Design) and 25 (Historic Environment) and Hackney's Sustainable Community Strategy (2009), Priorities 5 (Promoting Well-Designed Neighbourhoods) and 6 (Protecting Hackney's Environment). The proposals also align with emerging policies in the Local Plan, which are underpinned by Hackney's 2017 Conservation Areas Review Study.

9. LEGAL POWERS

- 9.1** The Council has the legal powers for this course of action. Section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on local planning authorities from time to time to determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and to designate those areas as conservation areas.
- 9.2** Section 69(2) places a duty on local planning authorities from time to time to review the past exercise of functions under this section and to determine whether any parts or further parts of their area should be designated as conservation areas, and if they so determine, to designate those parts accordingly. The present proposal arises out of this duty.
- 9.3** Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on local planning authorities, in the exercise of their planning functions, to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 9.4** There is no statutory duty to undertake public consultation prior to designating a conservation area, however it is established practice that a form of consultation be undertaken.

10. _____ DECISION MAKING PRINCIPLES

- 10.1** The proposal conforms to Council's principles of decision-making and public consultation.
- 10.2** The proposal is consistent with human rights. Although conservation areas introduce additional controls, planning applications are individually assessed on

their own merits and any other relevant applicable considerations can be taken into account during the assessment of such applications.

10.3 The proposal takes account of Historic England guidance on conservation areas, *Conservation Area Appraisal, Designation and Management*, 2019. This guidance notes that consultation is not required by legislation or planning policy, but states that “by consulting local communities and owners on new designations ... consideration can be given to relevant information that either might present, helping to ensure decisions are robust” (Historic England does not specify a time period). In the absence of legislation prescribing the manner of consultation to be undertaken for proposed conservation areas, it is also prudent that this form of non-statutory consultation be guided by the Consultation Principles guidance produced by the UK Government’s Cabinet Office.

10.4 The specific proposal of this report will further the Council's aim to conserve its historic environment in a more timely and efficient manner.

11. EQUALITY IMPACT ASSESSMENT

11.1 There will be no detrimental impact to groups with protected characteristics under the Equality Act 2010.

12. SUSTAINABILITY

12.1 There will be a beneficial effect on sustainability objectives through improved protection of the historic built environment, which forms part of the physical environment. There will be no detrimental effect on the economic or social environment.

13. RISK ASSESSMENT

13.1 None required.

14. COMMENTS OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES

14.1 This report requests Cabinet to approve revised reporting and public consultation procedures for items relating to the Council’s Conservation Area Review Programme.

14.2 The recommendation in this report has no immediate financial impact and any costs incurred will be minimal and contained within the current Planning budgets.

15. COMMENTS OF THE ACTING DIRECTOR OF LEGAL & GOVERNANCE SERVICES

15.1 Cabinet is authorised to approve revised procedures for the reporting of items to Cabinet in relation to the Council’s Conservation Area Review Programme. The revised procedure does not conflict with the Mayor’s Scheme of Delegation, which expressly grants responsibility to the Mayor and Cabinet to determine what areas

in the Borough should be declared Conservation Areas.

- 15.2** There is no statutory duty to undertake public consultation prior to designating a conservation area. The previous six week consultation period is a legacy of now repealed planning regulations. The proposed 28 day period is considered to be an appropriate period in which to engage with landowners, occupiers and other stakeholders and consider their views before making a recommendation on whether to expand the conservation area boundary. In exceptional circumstances, urgency may justify a shorter consultation period, subject to measures to maintain fairness.
- 15.3** While this form of consultation is not a statutory requirement, the process of consulting on proposed conservation areas should nevertheless be consistent with the general principles derived from case law as to how consultations should be conducted. These principles are known as the "Gunning principles" and are as follows:
- consultation should occur when proposals are at a formative stage;
 - consultations should give sufficient reasons for any proposal to permit intelligent consideration;
 - consultations should allow adequate time for consideration and response;
 - following the consultation coming to an end the Local Authority should conscientiously consider the consultation responses, or a summary of them, before determining what, if any, action to take.
- 15.4** In recent years members of the public and stakeholders with an interest in proposed conservation areas within the Borough may have had a legitimate expectation that a six week period of consultation would be undertaken where a new conservation area is proposed. However, a public authority generally has a wide discretion to change its own policies or practices if there is good reason to do so. In this case, shortening the standard time period for consultation is directed towards ensuring that efforts to conserve Hackney's areas of special architectural or historic interest are not frustrated by arbitrary time periods or meeting dates and a shorter consultation period is likely to reduce the unintended loss of historic architectural features which are proposed for protection. Transparency and scrutiny is provided to this proposed revised procedure by presenting this item to Cabinet and into the future, the public's expectation will be that a shorter consultation period becomes the norm.
- 15.5** Section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) ("the Act") effectively defines conservation areas as "areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance". Section 69(2) of the Act places a local planning authority under an ongoing statutory duty to review its conservation areas from time to time and "to determine whether any parts or further parts of their area should be designated as conservation areas".
- 15.6** Statutory implications of the expansion of the conservation area boundary chiefly relate to management of future development. Under section 72 of the Act, the LPA must pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area when determining planning applications. Furthermore, some permitted development rights (pursuant to the

Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”) are applied more restrictively or will not apply at all within conservation areas (e.g. additions to the roof of a dwelling house under class B of Part 1 of Schedule 2 of the GPDO etc.

- 15.7** A conservation area character appraisal and management plan is taken into account in the planning process, and in appeals against refusals of planning permission (including demolition) in a conservation area. The weight of the final appraisal document as a material consideration is also enhanced if it has been through a public consultation process.

APPENDICES

Conservation Area Review Programme Table
(Attached)

BACKGROUND PAPERS

Conservation Areas Review Study (CARS) 2017

See: <https://hackney.gov.uk/lp33>

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