

Business, Planning and Transport Policy and Scrutiny Committee

Date:	Tuesday 21 st March 2017
Classification:	General Release
Title:	Planning in Westminster
Report of:	Barry Smith, Head of City Policy & Strategy, Policy, Performance & Communications and John Walker, Director of Planning in Growth, Planning and Housing
Cabinet Member Portfolio	Cabinet Member for Planning and Public Realm: Councillor Daniel Astaire
Wards Involved:	All
Policy Context:	World Class Westminster
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1. Executive Summary

- 1.1 This paper gives an overview of the planning system in Westminster City Council (WCC), outlining the role of planning policy and the development management (planning application) process. It highlights key changes and priorities from the new Cabinet Member for Planning & Public Realm and describes the policy context to these at the local, London-wide and national levels. The planning process (both policy and development management) is an effective tool for delivering the aspirations of the Council as set out in City for All Year 3 – particularly in relation to housing delivery, support for jobs and economic development as well as civic leadership and community participation.

2. Key Matters for the Committee's Consideration

The Committee is asked to:

- I. Note current planning policy developments and the planning process at WCC;
- II. Note the priorities of the new Cabinet Member;
- III. Note changes to the external environment that will impact on WCC, and;

- IV. Identify any areas that the Committee wishes to focus on throughout the year ahead which can be built into the work programme.

3. Background

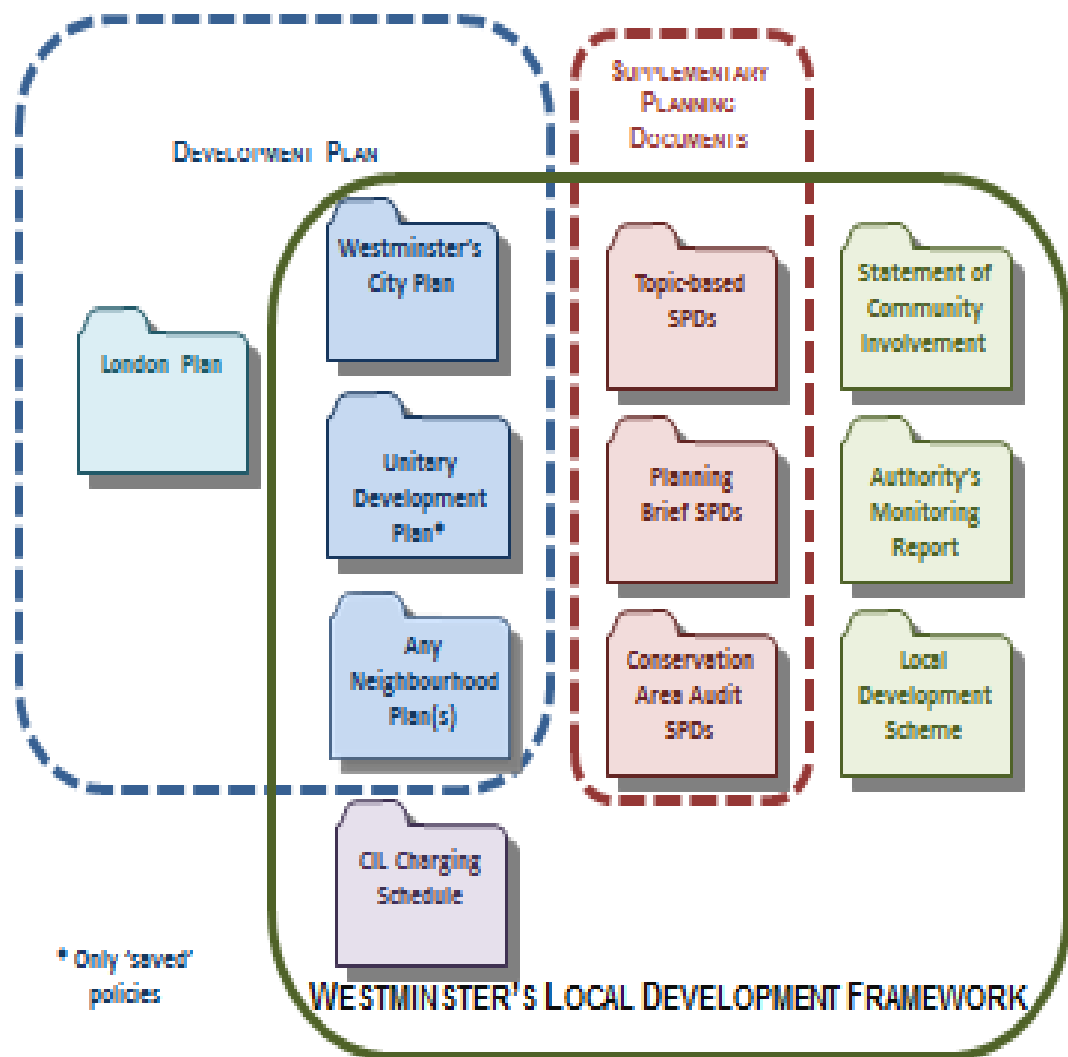
Planning Policy Context

- 3.1 Planning aims to ensure that the right development happens in the right place at the right time, benefitting communities and the economy and delivering sustainable development (which includes looking at economic, environmental and social aspects together). Within this, what “right” growth means in each case is defined in local and London wide plans and national policy.
- 3.2 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. It is for the decision maker to decide what weight is to be given to the material considerations in each case. In Westminster the development plan comprises:
- Westminster’s City Plan, November 2016 (which for the most part sets out high level strategic policies);
 - “Saved” policies from Westminster’s 2007 Unitary Development Plan (these tend to be more detailed policies dealing with how individual applications are dealt with);
 - The Mayor’s London Plan, and;
 - In the future any adopted neighbourhood plans within WCC
- 3.3 Westminster’s planning policies must also take into account the government’s National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG) and the Localism Act.

How the planning system works in Westminster

Westminster’s Planning Framework

- 3.4 The diagram below shows the documents which make up Westminster’s local planning development policy framework.



The planning application process

- 3.5 Planning applications must be decided in the context of published planning policies; the City Council's policies are prepared within Policy and Strategy, part of Policy, Performance and Communications, who are also responsible for Article 4 Directions, neighbourhood planning, the Community Infrastructure Levy (CIL), s106 monitoring and collection (see below) and responding to national and regional consultations and GLA/Mayoral strategies. Development Planning, within Growth, Planning & Housing, deals with all planning applications as well as planning appeals, the enforcement of planning control, the production of information publications, maintaining the statutory register of planning applications, responding to land search inquiries and works to trees.
- 3.6 Planning permission is needed for "development". Development is defined in the Planning Acts as: 'the carrying out of building, engineering, mining or other

operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.' Thus 'development' can take the form of either physical works to a building or land, or a change of use of the building or land.

Development which does not require planning permission:

- 3.7 To simplify the process the law allows a whole range of minor development to take place without the need for planning permission. These exemptions from planning control are set out in the General Permitted Development Order 1995, which sets out categories of 'permitted development', and the Use Classes Order 1987. Both Orders have been amended on several occasions since they were originally published.
- 3.8 A number of new 'permitted development' rights have been introduced in recent years in order to boost housing supply and enable appropriate development to take place more quickly. This includes changes introduced since May 2013 significantly affording greater freedom for homeowners to improve and extend their properties without the need to apply for full planning permission (subject to appropriate engagement with neighbours), rights for the change of use of offices to residential use (although much of Westminster is exempt from this provision due to the priority of offices within the Central Activities Zone) and greater flexibility for changes of use within commercial properties. The majority of these 'permitted development' rights involve an application for 'prior approval' submitted to the Council, where certain criteria must be assessed.

Other types of applications

- 3.9 In addition to planning applications, the following types of applications are submitted under the Planning Acts; often they are submitted in association with planning applications:
- Listed building consent is required for most works (both internal and external) to a listed building. These applications may be submitted on their own where the works are purely internal, or in conjunction with planning applications when both internal and external work is proposed.
 - Separate regulations cover the procedures and relevant considerations for advertisements, which include shop signs, blinds (with writing on) and estate agents' boards. Most small scale, low level, non-illuminated signs do not require consent from the City Council. Consent may only be refused on the grounds of public safety or amenity.
 - There are two types of Certificates of Lawful Development.
 - (a) The first refers to development that has already been carried out without planning permission. A Certificate of Lawfulness of Existing Development must be granted when, by virtue of the length of time the development has existed, it has become lawful. That is, the planning merits cannot be taken into account. In the case of building works or

residential uses, the development becomes lawful after four years. For all other uses, the time period is ten years.

- (b) In certain circumstances, it may not be clear whether planning permission is required for a development. The Certificate of Lawfulness of Proposed Development enables an applicant to seek a formal view on the need for making a planning application. The certificate would be granted where the development proposed does not require planning permission. Again, there is no assessment of the merit of the development proposed: the procedure is restricted to assessing only whether permission is required.
- Consent is required for any works to trees covered by a Tree Preservation Order (TPO). In conservation areas, six weeks' notice must be given to a local authority before works to trees are undertaken, thus giving the City Council the opportunity to consider making a TPO.

Conditions attached to planning permissions

- 3.10 Local authorities have the power to impose such conditions as they think fit on planning permissions in order to make otherwise unacceptable development acceptable. Such conditions must, however, comply with the requirements of Paragraph 206 of the NPPF and the associated advice on the use of planning conditions in the NPPG. Planning conditions should only be imposed where they are necessary, relevant, enforceable, precise, and reasonable.

Legal agreements and planning obligations

- 3.11 A planning obligation can involve a legal agreement between the Council and the applicant (and others), or can be offered by the applicant unilaterally. It secures some additional works or other benefits that are required in order to make a development proposal acceptable and which, for one reason or another, cannot be secured by a planning condition. They may prescribe the nature of the development, compensate for loss or damage created by the development; or mitigate a development's impact. The legal mechanism for achieving planning obligations is set out in Section 106 of the Town and Country Planning Act 1990. Planning obligations should only be sought where they are:
1. **Necessary** to make the proposed development acceptable in planning terms.
 2. **Directly related** to the proposed development.
 3. **Fairly and reasonably related in terms of scale and kind** to the proposed development;

Appeals

- 3.12 An applicant can lodge an appeal to the Secretary of State against the Council's decision to refuse planning permission or to impose conditions on a planning permission. Appeals may be dealt with by written representations, informal hearing or public inquiry. In any appeal, an appellant may make a

claim for costs against the Council. The City Council may also seek costs from appellants if they have acted unreasonably, and caused the City Council unnecessary expense. Costs may be awarded where a party has behaved unreasonably and this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. A full or partial costs award may be made.

Planning Enforcement

- 3.13 Local planning authorities provide planning enforcement services which are a vital part of the planning process. By identifying and tackling cases of unauthorised development, the enforcement process ensures fairness, stops unacceptable development and gives communities confidence in the system. Although effective planning enforcement is fundamental to the integrity of the system, responses to breaches of planning control should always be proportionate. Where work has been undertaken without the necessary permission, there is scope to apply retrospectively for planning permission. Stages in the planning process are shown at Appendix 1.

Key Planning Policy Developments within Westminster

City Plan Review

- 3.14 Local Plans are the key documents through which local planning authorities can set out a vision and framework for the future development of the area, engaging with their communities in doing so. They also address needs and opportunities in relation to housing, the local economy, community facilities and infrastructure, etc.
- 3.15 Westminster's local Plan currently comprises two documents. The first is the Westminster City Plan which was adopted with updated policies in November 2016. This currently sets out strategic policies more detailed ones setting out the specific requirements for the determination of planning applications are contained in "saved" policies in the Unitary Development Plan (UDP) (adopted 2007). Policies in both documents are, therefore, used to determine planning applications.
- 3.16 Revisions to the City Plan must go through a process set out in national legislation. The Government sets national policy about what local plans should deal with and the evidence base that should be used in the NPPF, with more detailed guidance in the NPPG. The stages in the preparation or revision of a local plan are detailed at Appendix 2.
- 3.17 The City Plan will be undergoing a complete re-write during 2017-2018 to incorporate new development management policies to replace the remaining saved UDP policies, creating a single up to date local plan which fully reflects the council's strategic policies on achieving the right kind of growth for Westminster and will include the most recent information about demographic, economic, environmental and social trends. The opportunity will be taken to try

to make the policies more user-friendly, simplifying/streamlining them where possible.

Neighbourhood Plans

- 3.18 Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. Neighbourhoods can prepare plans which have legal weight as part of the statutory development plan. They can also grant planning permission for the development they wish to see through making a 'neighbourhood development order'. More information on neighbourhood planning in Westminster is set out in Appendix 3.
- 3.19 The relationship between this Scrutiny Committee and the new City Planning & Development Committee will need to be clarified as the City Plan is reviewed. Both Committees have a role in scrutiny and clarity over roles and responsibility will need to be agreed to avoid duplication of officer resource. The Constitution and Terms of Reference is shown at Appendix 5.

The priorities of the new Cabinet Member for Planning & Public Realm

3.20 As set out at Full Council on 1st March 2017, these include:

- New forms of engagement with the industry (see Appendix 7);
 - Building more affordable housing and mixed communities through reviewing our policies, using s106 agreements to support the building of more affordable homes and lobbying for a tariff based approach for affordable housing – rather than an emphasis on viability;
 - The City Plan- consulting on what good growth and building height mean for Westminster and ensuring the benefits of this prosperity are evenly spread;
 - Considering whether we are too restrictive on roof extensions (for example, should owners be allowed to extend upwards), and;
 - A 'can do' approach to planning to preserve our position as a multi-cultural, generational city which capitalises on economic benefits.
- 3.21 This Committee may want to consider their potential contribution to policy development in these areas as part of its future work programme. In particular Committee may want to consider:
- The City Plan revisions and the consultation on good growth and building height prior to the end of the consultation period to inform the Cabinet Member's views/decision
 - Planning's role in delivering more affordable housing.

Community Infrastructure Levy (CIL)

- 3.22 The Community Infrastructure Levy (CIL) is a charge on development to help fund infrastructure which the council, local community and neighbourhoods require to help accommodate new growth from development. Westminster's CIL Charging Schedule (the legal document that formally allows the council to

charge CIL and sets out the rates charged) is shown at Appendix 4; rates are per square metre for developments where there is an increase of new build floor space of 100sqm or more.

- 3.23 On 20th February 2017 the Cabinet approved detailed governance arrangements for taking decisions on how CIL monies will be spent. These follow the requirements of the CIL Regulations (more information on the requirements are given in Appendix 4 to this report), including how decisions will be taken on the portion of CIL revenue required to be spent in agreement with neighbourhoods. Westminster's CIL is projected to raise average revenue of around £17.5m per annum across the development cycle. The City Council is able to retain 5% of its own CIL receipts and 4% from the Mayoral CIL receipts it collects for administration, monitoring, collection and reporting purposes. The CIL governance procedures agreed by Cabinet include:
- a) The Leader appointing a Cabinet CIL Committee, to be chaired by the Cabinet Member for Planning and Public Realm and with a membership to be appointed by the Leader which will provide member oversight of implementation and collection of CIL, take decisions on spend proposals submitted by an officer working group (or to refer decisions to Cabinet as appropriate)
 - b) Establishing an officer working group which will be chaired by the Head of City Policy and Strategy and comprise representatives of all the council's directorates) to oversee administration and governance of the CIL, to give initial consideration to proposals for spending CIL revenue and to make recommendations to the Cabinet CIL Committee.
 - c) The working group will draw up a policy statement on the administration and allocation of CIL (including the portion that has to be spent in agreement with neighbourhoods)
- 3.24 Liability to pay CIL arises when planning permission is granted – at which point the council issues a “liability notice”. It is actually paid within 90 days of development commencing when a “demand notice” is issued (the council has a policy for payment of larger amounts by instalment). Charging started in May 2016 and because of the inevitable lag between planning permission being granted and development starting, actual collection of CIL has started slowly. At the time of writing this report the council has issued 101 liability notices for a total amount of £23,298,273 and 18 demand notices for a total amount of £7,283,030. Of this sum, a total of £451,598 has been paid and there is, therefore, currently an outstanding sum of £6,831,432 payable by mid-March 2018.
- 3.25 The Government has recently published the report of an independent review of the CIL carried out by a group chaired by the former Chief Executive of the British Property Federation. This suggests replacement of CIL by a lower, simpler “local infrastructure tariff”. Ministers have stated that they will announce their decision on this in the autumn budget; the council will be taking steps to ensure it makes its views on CIL known to Government. Developments around the CIL, including changes in national policy and

progress locally might be something that the Committee wants to consider later in 2017/18.

Changes to the External Environment

The London Plan Review

- 3.26 In London the Mayor remains responsible for producing a strategic plan for the capital, in the form of his “spatial development strategy” - commonly known as the London Plan. The London Plan provides London boroughs with an overarching framework for their local plans, helping them to tackle strategic as well as local issues effectively. Local Plans in London need to be in ‘general conformity’ with the London Plan, which also guide decisions on planning applications by London borough councils and the Mayor as it forms part of the statutory development plan. Policies in the London Plan are, therefore, a material consideration in the determination of planning applications in Westminster.
- 3.27 The London Plan is undergoing a full re-write. Work on this has picked up pace following Sadiq Khan’s election as Mayor last year. A first draft for consultation is expected to be published in November 2017, with an Examination in Public in summer 2018 and publication of the new plan in autumn 2019.

The Housing White Paper: Fixing our Broken Housing Market (February 2017)

- 3.28 The White Paper sets out a large number of proposals covering all stages of housing delivery to:
- plan for the right homes in the right places
 - build homes faster
 - diversify the housing market; and
 - help people now
- 3.29 Measures which are to be welcomed and which have a potential impact on planning include:
- An invitation to councils to come forward with plans for additional housing delivery and make deals with government that might include flexibilities around things such as Housing Revenue Account borrowing caps – WCC have supported this and asked for a ‘bespoke housing deal’
 - A 20% increase in planning application fees from July 2017, where the local planning authority commits to increasing resources for planning
 - Greater commitment to ensuring that infrastructure planning by utilities is better coordinated with local plans.
- 3.30 A detailed response to these is being prepared in discussion with the Cabinet Members for Planning and Public Realm and Housing.

- 3.31 The Government's Designation Regime for Local Planning Authorities has been updated to include an assessment of the Council's performance (i.e. the proportion of applications determined within the statutory timeframes set by Government) for non-major applications in addition to major applications, as of January 2017. The Government have decided not to designate Westminster as 'underperforming' for this year given the exceptional circumstances affecting performance during the two year assessment period (2014-2016), namely the transformation of the Development Planning department involving a move to digital application processing. However, the Government targets for major and non-major developments have increased for the current year and as such it is essential to focus on performance in order to ensure that the Council avoids future designation.
- 3.32 Building Our Industrial Strategy Green Paper was launched on 23rd January 2017. The paper sets out that 'a modern industrial strategy' must amongst other things; make the UK one of the most competitive places in the world to start or grow a business. The Green Paper sets out the 10 pillars of the government's approach, those most appropriate to this committee are shown below:
- Developing skills
 - Supporting businesses to start and grow
 - Encouraging trade and inward investment policy
 - Cultivating world-leading sectors
 - Driving growth across the whole country
 - Creating the right institutions to bring together sectors and places
- 3.33 As we seek new and expanded markets, post-Brexit, global market share will be all important. It is only in London that we see such a concentration of world leading companies whose response to Brexit will raise issues for both our planning policy development and for our development management process.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact Muge Dindjer x2636
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APPENDICES:

- Appendix 1 - Stages in the Planning Process
- Appendix 2- Stages in the preparation or revision of the City Plan
- Appendix 3 – Neighbourhood planning in Westminster
- Appendix 4- CIL charging schedule and Portions
- Appendix 5- City Planning and Development Committee
- Appendix 6- List of Planning contacts
- Appendix 7-WCC Planning Guidance

Appendix 1

STAGES IN THE PLANNING APPLICATION PROCESS:

1. Pre application advice	<ul style="list-style-type: none"> • Optional advice with planning officers which is charged for.
2. Submit planning application	<ul style="list-style-type: none"> • A fee is payable for most applications; fee levels are set by national government.
3. Notification and consultation with community and statutory consultees	<ul style="list-style-type: none"> • Statutory consultation for not less than 21 days. • Specific publicity requirements depend on the application.
4. Determination of application	<ul style="list-style-type: none"> • Planning application determined in accordance with the development plan unless material considerations indicate otherwise. • Local planning authority has 8 weeks to make a decision on minor applications, 13 weeks for major applications and 16 weeks for applications involving an Environmental Impact Assessment.
5. Decision	<ul style="list-style-type: none"> • Planning officers usually determine applications for smaller developments under delegated decision-taking powers. • Larger and more controversial developments are usually determined by planning committee.
6. Option to appeal decision	<ul style="list-style-type: none"> • Applicant has a right to appeal to the Secretary of State, via the Planning Inspectorate, if the local planning authority refuses to give planning permission, grants it subject to unacceptable conditions or does not come to a decision within the specified statutory period for determining the application. • Planning appeals can also be 'recovered' by the Secretary of State.
7. Consideration by the Mayor	<ul style="list-style-type: none"> • The Mayor is consulted on all planning applications that are of potential strategic importance to London. These are commonly known as 'referable' applications. • An application is referable to the Mayor if it meets the criteria set out in the Mayor of London Order (2008). The criteria includes: <ul style="list-style-type: none"> ○ development of 150 residential units or more ○ development over 30 metres in height (outside the City of London) ○ development on Green Belt or Metropolitan Open Land of over 1,000sqm ○ development affecting strategic views ○ major infrastructure

	<ul style="list-style-type: none">• Once an application has been submitted, the Mayor has six weeks to provide comments on the application, assessing whether it complies with the London Plan policies. This consultation stage is commonly known as “Stage 1”.• The application is then considered by the local planning authority at its planning committee, where it decides whether to grant or refuse permission.• Following its consideration, the local planning authority is then required to refer the application to the Mayor for his final decision, known as a Stage 2 referral. The Mayor has 14 days to make a decision to allow the local planning authority decision to stand, to direct refusal, or to take over the application, thus becoming the local planning authority. The Mayor can direct a borough to refuse permission if a development would prejudice implementation of the London plan, or otherwise be contrary to good strategic planning.
<p>Where planning permission is granted, the applicant usually has three years to begin implementation of the permission.</p>	

Appendix 2

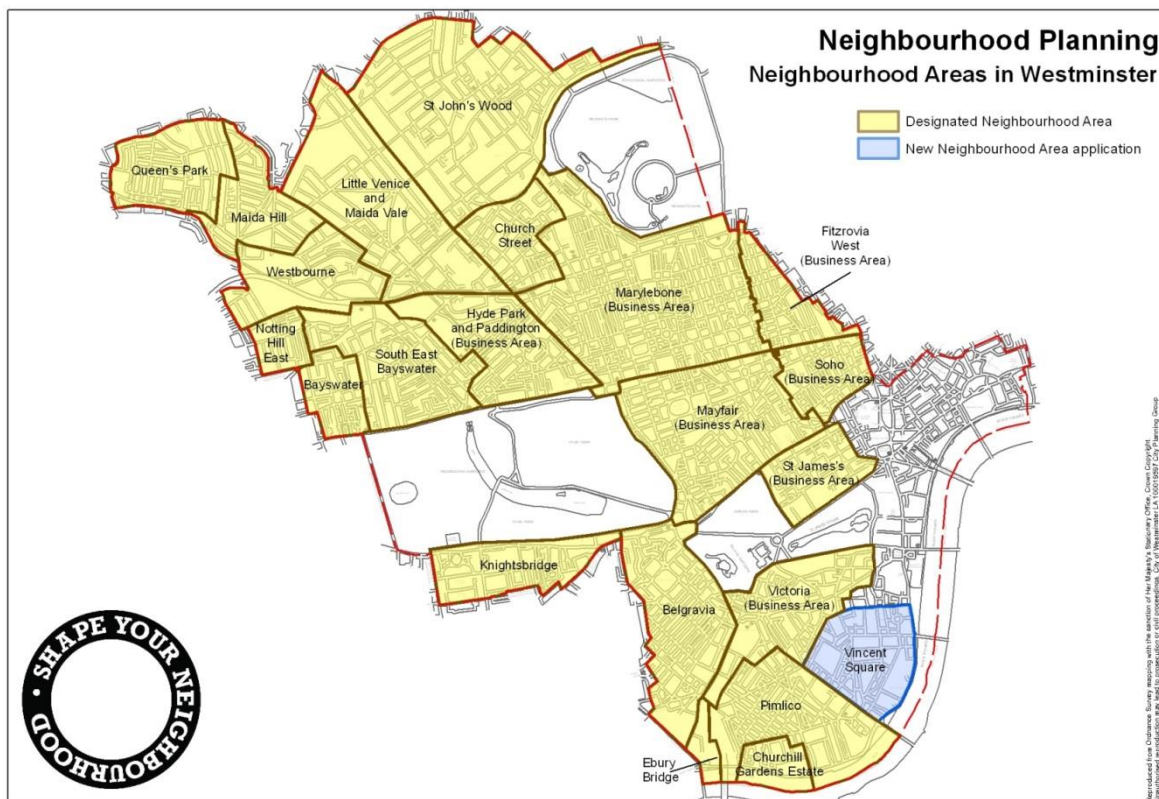
STAGES IN THE PREPARATION OR REVISION OF A LOCAL PLAN:

1. Initial evidence gathering and consultation	<ul style="list-style-type: none"> • Formulate initial aims and objectives. • Begin evidence gathering. • Notify relevant consultation bodies and those carrying on business in the area and invite them to make representations. • Discussions with the Mayor and neighbouring boroughs (there is a statutory duty to cooperate with other authorities on strategic planning issues of cross-boundary importance).
2. Publication	<ul style="list-style-type: none"> • Local plan is formally published for a minimum of six weeks for representations to be made.
3. Submission and examination	<ul style="list-style-type: none"> • Local Plan, representations and other required documents are submitted to the Planning Inspectorate. Inspectorate arrange for the Local Plan to be scrutinised through an examination by an independent inspector.
4. Found sound	<ul style="list-style-type: none"> • Inspector writes a report setting out whether the Local Plan is sound and satisfies legal requirements. • If the Local Plan is not sound, the local planning authority can ask the inspector to recommend modifications to make it sound.
5. Adoption	<ul style="list-style-type: none"> • If the inspector recommends that the Local Plan may be adopted, the local planning authority may formally adopt it (usually by a vote in full Council). • Once adopted, it is part of the development plan for the local area.

STAGES IN THE PREPARATION OR REVISION OF A LOCAL NEIGHBOURHOOD PLAN:

In Westminster there are 20 designated Neighbourhood Areas, and one Neighbourhood Area which is awaiting formal designation, shown on the map below. Neighbourhood areas can then decide to establish forums that can go on to draw up neighbourhood plans – 15 of Westminster’s neighbourhoods have designated forums (an application for designation of a forum for Hyde Park and Paddington is currently under consideration).

Knightsbridge and Mayfair Neighbourhood Forums are the most advanced in production of their Neighbourhood Plans, with the former having conducted a formal round of public consultation before formal submission. Queen’s Park Community Council is also preparing a plan. Other Forums are making a start on the production of a plan.



CIL Charging Schedule

Use	Area		
	Prime	Core	Fringe
Residential (including all residential 'C' use classes)	£550	£400	£200
Commercial (offices; hotels, nightclubs and casinos; retail (all 'A' use classes and sui generis retail)	£200	£150	£50
All other uses	Nil		

CIL Portions and receipts

Portion	Percentage of receipts	Process
City CIL Strategic Portion	70 - 80%	Spend decided by Council according to its strategic infrastructure priorities. Spend can be anywhere within Westminster - or outside – providing the infrastructure funded is required to support development in Westminster.
Neighbourhood Portion	Currently 15% of CIL collected in respect of development in each neighbourhood capped at £100 per council tax dwelling. This increases to 25% (uncapped) in places where a <u>neighbourhood plan is in place.</u>	<u>Queen's Park:</u> neighbourhood portion passed to the Community Council who spend it. <u>Elsewhere:</u> funding retained by the Council and spent by it in agreement with the neighbourhood communities in which development paying a CIL has taken place.
CIL Administrative Expenses Portion	5% of CIL collected	Spend applied to costs of administrative expenses for collection and enforcement in line with legal restrictions on the use of this funding. (NB 4% of the Mayoral CIL collected by the council can also be retained for this purpose).

City Planning and Development Committee

Constitution

16 members of the Council (12 Majority party members and 4 Minority party members). Such members to be members of the Planning Applications Committees (No's 1 to 4).

Terms of Reference

1. To consider proposed local plan policies (and supplementary planning documents) at appropriate stages of the statutory process for their preparation and adoption and make recommendations to the relevant Cabinet Member.
2. To have oversight of the practices and procedures of the Planning Applications Committees (but not to consider individual planning applications) making recommendations where necessary to officers, Planning Applications Committees and/or the Cabinet Member for Planning and Public Realm.
3. To consider and recommend a training programme for members of the Planning Applications Committees.

LIST OF PLANNING CONTACTS

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Appendix 7