

	<p>Planning Committee 22nd June 2020</p>
<p>Title</p>	<p>Mill Hill Neighbourhood Plan Area and Forum Application</p>
<p>Report of</p>	<p>Deputy Chief Executive</p>
<p>Wards</p>	<p>Mill Hill and Hale</p>
<p>Status</p>	<p>Public</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>Yes</p>
<p>Enclosures</p>	<p>Appendix 1: Application for MHNP Area Appendix 2: Application for MHNP Forum Appendix 3: Mill Hill Neighbourhood Forum Constitution Appendix 4: Responses and Representations Report</p>
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Summary

The legal remit (under the Localism Act 2011) of a Neighbourhood Forum is to produce a Neighbourhood Development Plan. An application for designation of a Neighbourhood Area and Neighbourhood Forum has been submitted to the Council for an area comprising Mill Hill ward and parts of Hale ward. This consists of 3 documents – Neighbourhood Area Application, Neighbourhood Forum Application and Forum’s Constitution. This report seeks a decision on the designation of the Mill Hill Neighbourhood Plan Area and Forum.

This is a new application following the Council's decision in July 2019 to refuse the re-designation of the Mill Hill Neighbourhood Plan Area and the Mill Hill Neighbourhood Plan Forum established in 2014.

The Localism Act 2011 sets out the requirements that must be satisfied in order for the Council to formally designate a Neighbourhood Area and Forum. This includes ensuring that it is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area.

In making a decision on designation, the Council must have regard to the efforts made in securing membership from people living or working in the area as well as those who are elected members of the Council that represent the proposed neighbourhood area. The Council must also ensure that membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area, and that the purpose of the organisation or body reflects (in general terms) the character of that area.

The application for designation has been subject to an 8 week period of publicity. This has generated a largely negative response (46 objections, 8 supports and 4 neutral). Objectors have highlighted concerns about the proposed constitution and the Forum not being truly representative of the area.

Given that a Neighbourhood Development Plan cannot be adopted until it has been confirmed through a local referendum it is imperative that any Forum enjoys support from the community it represents.

Recommendations

1. That the Committee:

- a. Note the responses (as set out in Appendix 4) to the application for the designation of the Mill Hill Neighbourhood Area and Forum;**
- b. Note the content of the Mill Hill Neighbourhood Forum Constitution (as set out in Appendix 3) and;**

2. That the Committee:

- a. Refuse the designation of the Mill Hill Neighbourhood Plan Area as shown edged black in Appendix 1 for the reason set out in this report;**
- b. Refuse the designation of the Mill Hill Neighbourhood Plan Forum as set out in Appendix 2 for the reason set out in this report**

1. WHY THIS REPORT IS NEEDED

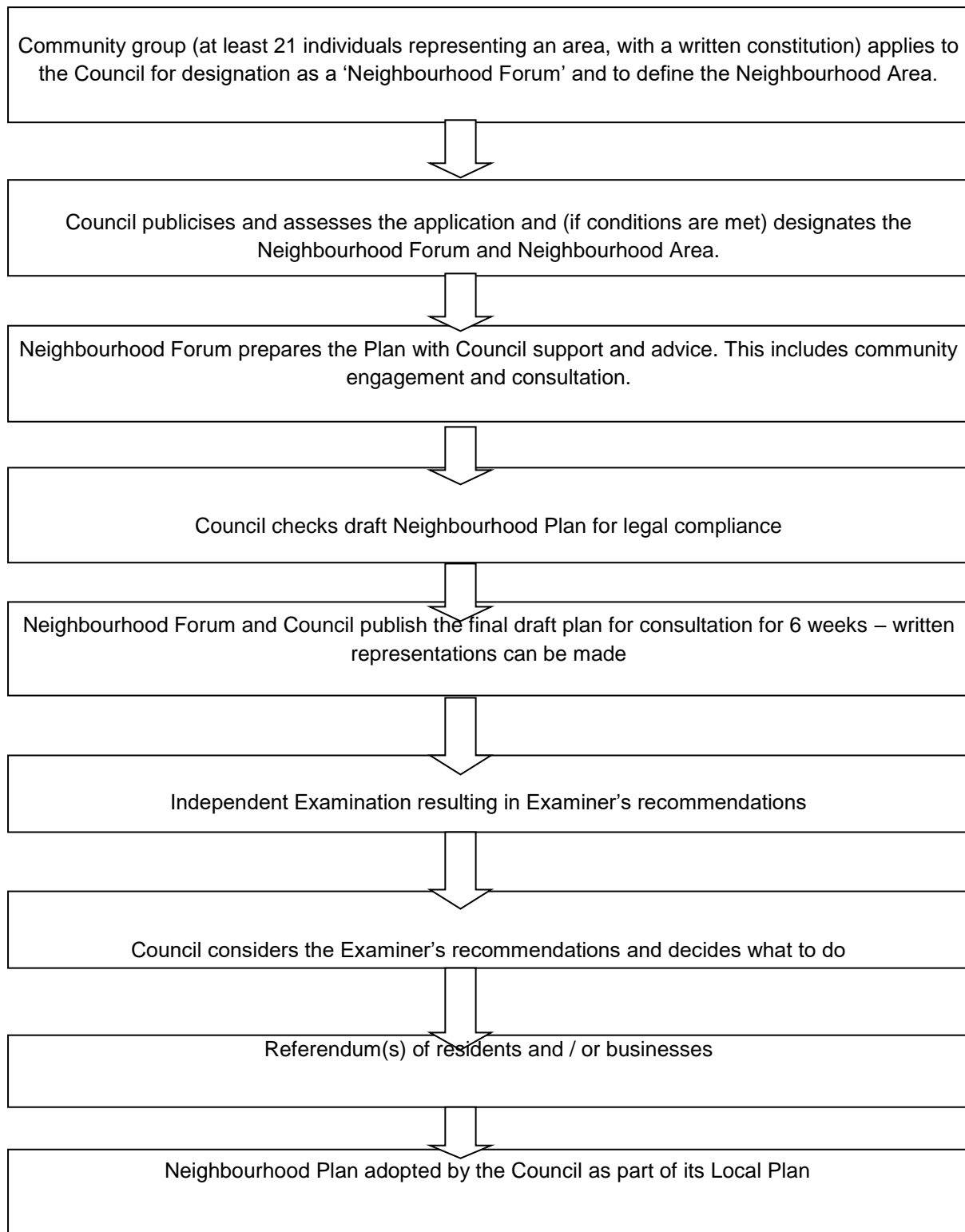
- 1.1 The Localism Act 2011 introduced a new right for communities in England to undertake Neighbourhood Planning. The 2011 Act places duties on local planning authorities to support the preparation of Neighbourhood Development Plans.

- 1.2 Neighbourhood Development Plans are statutory planning documents which are prepared by a Parish Council, a community group or an organisation or body known as a "Neighbourhood Forum". To be designated a neighbourhood forum, the organisation or body should be inclusive and must be made up of a minimum of 21 people who live or work in the area or are elected local authority councillors in the area.
- 1.3 Neighbourhood Development Plans can establish general planning policies for the development and use of land in a neighbourhood, setting a vision for the future of the area and addressing issues such as the type, design, location and mix of new development. Plans can be detailed, or general, depending on what local people want; and, if appropriate, they can focus on a single planning issue.
- 1.4 Neighbourhood Development Plans must support growth and should not be used to block development. They must be in general conformity with the strategic policies in the existing development plan (in Barnet this consists of the Local Plan 2012 and the London Plan 2016). They must also comply with other relevant legislation, including EU directives and the Human Rights Act 1998.
- 1.5 Legislation on Neighbourhood Planning has mainly focused on established frameworks such as town and parish councils and has not considered Forums in metropolitan areas wanting to do more than producing a Neighbourhood Plan. The legal remit of a Forum is to produce a Neighbourhood Plan within 5 years. Involvement in regeneration or town centre improvements is outside this legal remit. A Forum does not have any function after a Neighbourhood Plan has been adopted as part of the local planning framework. The Forum ceases to formally exist at adoption.
- 1.6 As part of the Neighbourhood Plan the priorities for the Neighbourhood Portion of Community Infrastructure Levy (CIL) spending in the area should be set out. The amount of the Neighbourhood Portion varies depending on whether there is an adopted Neighbourhood Development Plan (NDP). In areas where this has happened 25% of CIL collected from development within the Neighbourhood area is available. Otherwise the Neighbourhood Portion is 15%. In areas without parish or town councils, the Neighbourhood Portion is retained by the local authority and should be spent locally, following consultation with the community. If a Neighbourhood Plan is in place and it has set out priorities for CIL expenditure the Council should spend this money in accordance with the Neighbourhood Plan's priorities. Several objections have referred to the Forum managing substantial amounts of public money. The Forum does not have any access to CIL money arising from development in the Neighbourhood Area nor has it claimed that it would have such access.
- 1.7 The Forum will be an unincorporated body. Several objections have referred to the Forum having more transparent financial management. Clarification on the remit of an unincorporated body and an incorporated one is set out below.

Unincorporated	Incorporated
Group of individuals	Legally recognised body
Unlimited liability	Limited liability
Cannot hold some grant funding in its own right	Can hold grant funding in its own right
Cannot hold property as an organisation	Can hold property as an organisation
Cannot enter into contracts as an organisation	Can enter into contracts as an organisation
No asset lock	Usually an asset lock

- 1.8 In order for a community group to produce a Neighbourhood Development Plan, they must submit an application to the Council defining their boundary and details of who is involved within the Forum. It is for the community to define the area to be covered by their Neighbourhood Plan and the people who are to be involved in the Forum, although the Council has a role in ensuring that the Forum is engaging with the local community and local stakeholders.
- 1.9 The previous Forum in Mill Hill was designated in 2014. Forums are expected to focus on producing a Plan and to do so within 5 years. The Forum did not produce a Plan in that time and applied in 2019 for re-designation. The publicity for the re-designation unleashed a wave of antagonism towards the Forum. Objections highlighted issues around the slow progress of producing a Neighbourhood Plan, the Forum's governance and lack of transparency plus an issue of safeguarding. Ward members withdrew their support and membership dropped below the required 21 members of the Forum Steering Committee. This formed the basis for a recommendation of refusal at Planning Committee in July 2019.
- 1.10 A summary of the process of Neighbourhood Forum designation and Neighbourhood Development Plan preparation is included in Table 1. It is generally expected on current country wide experience that the adoption of a Neighbourhood Development Plan should be completed within the initial five year designation period. As highlighted in Table 1 one of the last stages of Neighbourhood Plan production is a referendum of residents and businesses. It is therefore imperative that a Forum has secured support from local residents and businesses.

Table 1: Summary of the Neighbourhood Development Plan preparation process



2. REASONS FOR RECOMMENDATIONS

- 2.1 In accordance with requirements of the Neighbourhood Planning (General) Regulations 2012 and Sections 61F and 61G of the Town and Country Planning Act 1990 as amended by the Localism Act 2011, the emerging Mill Hill Neighbourhood Forum has submitted their applications for Neighbourhood Area and Forum designation.

Mill Hill Neighbourhood Applications

- 2.2 In March 2020, a group submitted an application to become a Neighbourhood Forum and designate an area to become a Neighbourhood Area.
- 2.3 The proposed **MHNP Area** (Appendix 1) includes all of Mill Hill Ward and those parts of Hale Ward within the NW7 postal district. The Area map also includes the Mill Hill Area Action Plan (AAP) and the Mill Hill Conservation Area. These planning designations will not be affected by the emerging Neighbourhood Development Plan proposals. The group believe this is the appropriate area for their allocated neighbourhood because it is one widely regarded as “Mill Hill” by those who live and work in the area. The proposed Area is the same as the previously designated Mill Hill Neighbourhood Area which expired in September 2019.
- 2.4 In accordance with conditions contained in section 61F(5)(c) of the 1990 Act, membership of the Forum must include 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 London borough whose area falls within the neighbourhood area concerned
- 2.5 The proposed **MHNP Forum Committee** currently comprises 24 representatives of local businesses and residents across the 2 wards in the proposed Neighbourhood Area (see Appendix 2). No elected members of Mill Hill or Hale are currently members of the Committee.

Publicity on the MHNP applications for Area and Forum designation

- 2.6 Regulation 9 of the Neighbourhood Planning (General) Regulations 2012 requires applications to be published on the Council’s website and in other such manner likely to bring the application to the attention of people living, working or carrying out business in the area.
- 2.7 The Council published the applications for the Area and Forum on its website initially for a period of six weeks from 11th March 2020. The consultation period was extended for two weeks to take into consideration Covid-19, taking the closing date to 6th May 2020.

- 2.8 In response to the publicity, several statutory agencies and regional bodies (Historic England, Environment Agency, Natural England and Highways England) submitted comments clarifying their roles and responsibilities and highlighted areas of importance for developing a local evidence base. Other feedback consisted of 58 representations of which 4 were neutral, 8 supported the designation and 46 objected.
- 2.9 Support came from local residents and a local business. Supportive comments related to the previous MHNF, highlighting the Forum's achievements and support for the new application.
- 2.10 Objections came from Mill Hill / Hale residents as well as Councillors. Appendix 4 sets out representations received and the Council's responses to the issues raised. A summary of the objections includes:
- Claiming to be a new Forum but is guided by leaders of the previous one
 - Not reached out to the wider community with no public meetings and no consultation with local residents and businesses
 - Not considered a true representation of Mill Hill residents – claims that Forum lack's inclusivity
 - Voluntary bodies have no representation
 - Concerns about ensuring good governance and transparency
 - Data protection issues raised in using data from the previous Forum
 - Particular concerns raised about the proposed Constitution :
 - Members of the Forum are not allowed to call an EGM
 - Committee has control on a number of decisions and not the Forum members
 - Assurances needed that minutes are published and that there is regular reporting
 - Quorum considered to be too small
 - Restrictions - can only become a forum member by email
 - Interests should be made public not as a private document
- 2.11 It is considered that the applications do not satisfactorily meet all of the statutory requirements. This has been amplified by the nature of the response to the publicity on the application. Prior to the publicity of the application the Council provide feedback to the applicant emphasising that this application has to reflect a new start for Mill Hill. It highlighted a number of areas where the application could be improved and not duplicate what was in the original application in 2014. The Council cautioned about highlighting the work done by the previous Forum, including the statement about inward investment. Concerns were expressed about the Forum demonstrating evidence of public support for the new application. The Council repeated the message that it expects Forums to be managed in a way that promotes good governance and transparency enabling the local community to be engaged and able to contribute to the production of the Neighbourhood Plan. Timely publication of minutes is good practice, 6 weeks is too long.

- 2.12 Although the proposed Forum has secured membership from at least 21 individuals who live and work in the Area it has not secured representation by any of the 6 Councillors representing Mill Hill or Hale. This is a significant problem as it means that the Council has no representation on a Forum that is producing a planning framework for an area of the Borough.
- 2.13 The Council found no evidence that the proposed Forum has reached out to the wider community prior to the submission of the application in March 2020. This has generated objections that the application represents a continuation of the previous Forum. There are concerns that well-established groups such as the Mill Hill Residents Association, Mill Hill Preservation Society, NW7HUB and Copthall Strategy Group are not represented. Such groups can reach out to their own members in publicising the Forum and engaging on the Neighbourhood Plan. The Council expects Forums to be managed in a way that promotes good governance and transparency enabling the local community to be engaged and able to contribute to the production of the Neighbourhood Plan. There is no need to be secretive. There are also concerns about the Forum not being spatially representative of the proposed Neighbourhood Area, one of the largest in London.
- 2.14 The applicant has been informed of the recommendation to refuse the designation and the availability of third party support from Locality, a charity which the Ministry of Housing, Communities & Local Government (MHCLG) funds with regard to neighbourhood planning. The applicant has been strongly encouraged by the Council to apply for this support package in order to make a renewed application for designation. The applicant was also advised that in order to take stock of this support there would be merits in withdrawing this application.
- 2.15 Representations have also highlighted that another group is preparing an application to designate a Neighbourhood Area and Forum. The Council has no details of this other application and can only consider the application that has been submitted. However the Council has also highlighted to this other group the availability of support from Locality and strongly encouraged them to access it. Part of the support from Locality will involve mediation between the two groups and getting them to work together for the benefit of Mill Hill.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The alternative option is to designate the Neighbourhood Area and Forum for Mill Hill. The Council can withdraw the forum's designation (with reasons) at

any time if it is considered that it is no longer meeting the conditions of designation.

4. POST DECISION IMPLEMENTATION

4.1 Proceeding to designate the Forum presents a compliance risk. The proposed Forum and Neighbourhood Area do not appear to have the support of the local community and elected members for Mill Hill and Hale.

4.2 If the designation of Mill Hill Area and Forum is refused there will be an opportunity to bring in third party support to advise any future Forum on what is required to be a successful body that contributes to the social, economic and environmental well-being of the proposed Neighbourhood Area.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The **Council's Corporate Plan 2019 - 2024** sets out three main outcomes and eighteen priorities for the Council, these are:

- A pleasant, well maintained borough that we protect and invest in
- Our residents live happy, healthy, independent lives with the most vulnerable protected
- Safe and strong communities where people get along well

5.1.2 The designation of a Neighbourhood Forum and Area is the first step in producing a Neighbourhood Development Plan. Through Council support on the drafting and adoption of appropriate planning policies for the area these outcomes and priorities can be delivered. A basic condition for a Neighbourhood Forum is that it promotes or improves well-being via adoption of the Neighbourhood Development Plan which can be achieved by giving local people more influence over the future of their area.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 To date the primary cost to the Council associated with the MHNP application has been officer support time. This has been absorbed by Re and thus contained within existing budgets. No specific allocation of Council resources has been approved to support expenditure relating to production of Neighbourhood Development Plans.

5.2.2 Financial support for local planning authorities in areas where Neighbourhood Development Plans are emerging is currently available from MHCLG. At present this amounts to £30,000 for non-parished areas such as London Boroughs and is payable in instalments as the Neighbourhood Development Plan progresses to adoption. The first payment of £5,000 each will be made following Neighbourhood Area and Forum designations including re-designation. The second payment of £5,000 will be made following submission of the Neighbourhood Development Plan for examination. The third payment of

£20,000 will be made on successful completion of the examination. This is to support funding of a referendum. Claims are made retrospectively and there is no guarantee that this funding will continue.

5.2.3 Local planning authorities are not required to financially support production of Neighbourhood Plans. According to MHCLG estimates in 2011 the cost to a Forum of producing a Neighbourhood Development Plan is between £17,000 and £63,000.

5.2.4 Neighbourhood Development Plans may also impact on decisions relating to the allocation of CIL. With benefit of an adopted Neighbourhood Development Plan an area can access 25% of CIL generated by development within the boundaries of the Neighbourhood Plan Area. This money will be retained by the Council but must be spent in accordance with local infrastructure priorities as highlighted in the Neighbourhood Development Plan.

5.3 Social Value

5.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Neighbourhood Development Plans can help secure such benefits.

5.3.2 Social benefits will also be secured by the Neighbourhood Development Plan providing a local dimension to the housing and infrastructure requirements of Local Plan policy.

5.3.3 Economic benefits will be delivered through the Neighbourhood Development Plan's focus on the local economy including Mill Hill Broadway town centre as well as shopping parades and employment spaces within Mill Hill.

5.3.4 Environmental benefits will be delivered by a Neighbourhood Development Plan's response to resolving to local issues as regards biodiversity, climate change mitigation and adaptation, sustainable travel, flood risk management and improved air and water quality.

5.4 Legal and Constitutional References

5.4.1 The Neighbourhood Planning (General) Regulations 2012 set out the procedures for designating an organisation or body as a Neighbourhood Forum. These include specifying:

- the content of an application (Reg. 8)
- what the local planning authority must do to publicise both the application and any designation of a Neighbourhood Forum (Regs 9 and 10)
- Same Regulation applies for the Re-designation of the Forum and Renewal of the Area applications

5.4.2 The Council can designate an organisation or body as a Neighbourhood Forum if it meets the following **Basic Conditions** (61F(5), Town and Country Planning

Act 1990 as amended):

- (i) 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;
- (ii) membership is open to individuals living, or working, in the Neighbourhood Area concerned and Councillors representing that area;
- (iii) there are at least 21 members each of whom:
 - lives in the neighbourhood concerned;
 - works there; or
 - is an elected member of the Council representing that area.
- (iv) there is a written constitution; and
- (v) meets any other prescribed conditions.

5.4.3 Only one Forum can be designated for a Neighbourhood Area. It is open to a Forum to voluntarily withdraw its designation. Otherwise the designation expires after five years. The Council may withdraw this designation earlier if it considers that the Forum is no longer meeting:

- the conditions by which it was designated.
- any other criteria that the Council were required to have regard to when making the designation.

5.4.4 In accordance with section 61G and Schedule 4C of the 1990 Act, the Council should aim to designate the area applied for. It is able to refuse a designation if it considers that a specified area was not an appropriate area to be designated as a neighbourhood area and must set out reasons for doing so. If the Council refuses an application for designation of a neighbourhood area, then section 61G (5) of the 1990 Act requires that it must exercise its power of designation so as to secure that some or all of the specified area forms part of one or more designated neighbourhood areas. Same applies for Renewal or Re-designation applications.

5.4.5 The Council's Constitution details the terms of reference of the Planning Committee Responsibility for Functions and sets out the terms of reference of the Planning Committee which includes responsibility for considering the approval/refusal of 'Designating neighbourhood areas and neighbourhood forums for the purposes of neighbourhood planning'.

5.4.6 National Guidance on Neighbourhood Planning States that "When exercising its responsibilities in relation to relevant parts of the neighbourhood planning process, a local planning authority should make every effort to conclude each stage promptly. Timely decision taking is important particularly at the start and at the end of the process. Certain decisions must be taken within prescribed time periods (13 weeks in case of designating Area and Forum applications). These are set out in the Neighbourhood Planning (General) (Amendment) Regulations 2015, the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016, and the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2017 which amend the Neighbourhood Planning (General) Regulations 2012." (Planning Practice Guidance, paragraph 81).

5.5 Risk Management

5.5.1 Neighbourhood Planning raises a number of potential risks for the Council to consider. This includes:

- capacity of communities to maintain momentum on Neighbourhood Development Plan production;
- demands on Council resources to support Neighbourhood Planning and fulfil legal duties;
- the risk that Neighbourhood Development Plans could fail at final referendum stage, resulting in community disillusionment with the process;
- the risk that MHCLG do not fund a third party support package for Mill Hill through Locality and
- risks to community cohesion caused by inability to make communities work together on a Neighbourhood Plan for Mill Hill.

5.5.2 Neighbourhood Development Plans may require a Strategic Environmental Assessment during preparation, depending on their focus and content. This will need to be assessed on a case by case basis.

5.6 Equalities and Diversity

5.6.1 The Council has encouraged the emerging Mill Hill Forum to ensure membership reflects the character and diversity of the local population.

5.6.2 The requirement for equalities impact assessment needs to be considered on a case by case basis as further proposals for Neighbourhood Development Plans come forward.

5.6.3 Under section 149(1) of the Equality Act 2010, the Council, in the exercise of its functions, must have due regard to the need to: eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.6.4 The relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

5.6.5 The Council has had due regard to its public sector equality duty in making the recommendations as set out in this report.

5.7 Corporate Parenting

5.7.1 None in the context of this report.

5.8 Consultation and Engagement

- 5.8.1 The Council has a duty to publicise applications for designation as well as consult on the emerging Neighbourhood Development Plan and inform public accordingly. A summary of responses to the publicity is set out within Appendix 4.

5.9 Insight

- 5.9.1 None in the context of this report.

6. BACKGROUND PAPERS

- 6.1 Planning Committee, 24th July 2019 (Decision item 10) refused Re-designation of Mill Hill Neighbourhood Plan Area and Forum
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=703&MId=9896&Ver=4>
- 6.2 Planning Committee, 17th September 2014 (Decision item 13) approved Designation of Mill Hill Neighbourhood Area and Forum applications for adoption
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=703&MId=7914>
- 6.3 Council, 11th September 2012 (Decision item 4.1) approved the Local Plan Core Strategy and Development Management Policies for adoption
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=162&MId=6671&Ver=4>
- 6.4 Barnet's Statement of Community Involvement (2018)
http://www.barnet.gov.uk/sites/default/files/local_development_scheme_2020.pdf
- 6.5 Barnet's Authorities Monitoring Report 2018/19
http://www.barnet.gov.uk/sites/default/files/amr_2018-19.pdf