



Beyond Box-Ticking

A short guide to meaningfully assessing
Local Plan policy impacts on equality and inclusion





Section 1

Positive planning for equality and inclusion

Planning has a key role to play in achieving greater social and economic inclusion, promoting equality, and reducing poverty. At the same time, however, planning processes (either through action or inaction) can do and have done harm by leading to outcomes that reinforce and entrench existing inequalities and forms of exclusion. TCPA's *Planning out Poverty* report highlighted that:

*'planning has multiple and complex effects on people's lives because its decisions often involve the allocation of resources. Crudely, there are winners and losers from planning decisions, and planning therefore has the power to help promote greater or lesser levels of equity and social justice.'*¹

Planning policies and decisions impact different people differently. There are multiple groups in society who are both under-represented in engagement with planning processes and often at most risk of being disproportionately negatively affected by planning outcomes.

In the process of developing planning policy, it is vital that local planning authorities assess the potential impacts of draft policies on different groups at an early stage, and adjust policies accordingly over time.

Note

- 1 *Planning out Poverty: The Reinvention of Social Town Planning*. TCPA, Oct. 2013. <https://www.tcpa.org.uk/planning-out-poverty>

Section 2

The Equality Act 2010 and the public sector equality duty

Under the Equality Act 2010, planners are required to assess the impacts of planning policy on equality and inclusion. The 2010

Equality Act brought together 116 separate pieces of legislation into one single Act which provides a legal framework to protect the

Box 1 The public sector equality duty

As outlined by the Equality and Human Rights Commission:^a

'In summary, those subject to the general equality duty must, in the exercise of their functions, have due regard to the need to:

- *Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.*
- *Advance equality of opportunity between people who share a protected characteristic and those who do not.*
- *Foster good relations between people who share a protected characteristic and those who do not.*

These [requirements] are often referred to as the three aims of the general equality duty. The Equality Act explains that the second aim (advancing equality of opportunity) involves, in particular, having due regard to the need to:

- *Remove or minimise disadvantages suffered by people due to their protected characteristics.*
- *Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people.*
- *Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.*

It states that meeting different needs includes (among other things) taking steps to take account of disabled people's disabilities [as outlined in the 'Duty to make adjustments' section (Section 20) of the Equality Act]. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It explains that compliance with the general equality duty may involve treating some people more favourably than others.

To comply with the general equality duty, a public authority needs to have due regard to all three of its aims.'

A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the three aims above.

Note

^a *The Essential Guide to the Public Sector Equality Duty*. Equality and Human Rights Commission, Jan. 2011, updated 2014. https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf

Box 2 Protected characteristics

The Equality Act 2010 identifies personal characteristics that might lead people to experience discrimination and inequality, called the ‘protected characteristics’. These are:

- age;
- disability;
- gender reassignment;^a
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

The three aims of the public sector equality duty apply to all protected characteristics apart from marriage and civil partnership, which are relevant only to the first aim (eliminating discrimination).

Note

a Which should arguably be considered more broadly in terms of gender identity

Box 3 ‘Non-protected’ characteristics

Most notably, ‘non-protected’ characteristics include:

- Socio-economic characteristics:
 - social class; and
 - income level.

There are also a number of other specific groups that are particularly at risk of disadvantage and social exclusion, including, for example:^a

- looked-after children;
- homeless households and rough sleepers;
- refugees and asylum seekers;
- UK armed forces veterans; and
- people with experience of the criminal justice system.

Note

a *Equality, Diversity and Inclusion Evidence Base for London*. Greater London Authority, May 2018, updated Jun. 2019. <https://data.london.gov.uk/dataset/equality—diversity-and-inclusion-evidence-base>

rights of individuals and advance equality of opportunity for all. As part of the Equality Act, a public sector equality duty (see Box 1)

came into force in April 2011 and applies to all ‘public authorities’, including those developing planning policy.

Section 3

Protected characteristics – and characteristics and groups that are not specifically protected

The protected characteristics defined in the Equality Act 2010 are set out in Box 2. Importantly, in addition to the protected characteristics outlined in the Equality Act 2010, there are multiple other factors and characteristics that can lead to people being particularly at risk of disadvantage and social exclusion, as outlined in Box 3. Socio-economic factors, determined by social class and income level and notably not included within the Equality Act's protected characteristics, are vital considerations as they increase the likelihood of experiencing poverty, deprivation, ill-health, and other related outcomes.

It is important to note the linkages between socio-economic characteristics and protected characteristics – for example with regard to people with mobility impairments, and the higher rates of poverty among BAME (Black and Minority Ethnic) communities. Some of the other groups listed in Box 3 also overlap with or form sub-sets of specific protected characteristics – for example, looked-after children form a sub-set within the broader 'age' category, and some refugees and asylum seekers may overlap with the 'race' category.

Despite the multiple areas of overlap, as these characteristics and groups are not specifically included or highlighted within the protected characteristics, there is a risk that the impacts on people with these characteristics or within these groups may not be considered fully in assessments. It is therefore recommended that in the development of Local Plans, in order to promote equality and inclusion, there should be early and continuous assessment of how policies impact **all** groups who are particularly at greater risk of disadvantage and social exclusion.

Defining the scope of Equality Impact Assessments

Methodology

Guidance advises that:

*'In order to have due regard to the aims of the general equality duty, you will need to understand the impact of your functions on equality. This includes your existing policies and any new policies under development.'*²

Furthermore, assessing impacts on equality and inclusion:

*'can help you to understand the risk and extent of any adverse impact or potential unlawful discrimination. It can enable you to develop practical courses of action to advance equality and mitigate negative consequences before proposed policy is adopted.'*³

Within the process of Local Plan development, to discharge the equality duty most local planning authorities choose to carry out an Equality Impact Assessment (EqIA). The general equality duty does not prescribe a particular methodology for assessing the impact on equality, so it is up to each authority to develop the approach that they wish to take (see Box 4).

Note

- 2 *Meeting the Equality Duty in Policy and Decision-Making*. Equality and Human Rights Commission, Oct. 2014. https://www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf
- 3 *Ibid.*

Box 4 A good method of assessing impact on equality

Equality and Human Rights Commission guidance advises that a good method of assessing impact on equality:

- *Is integrated into mainstream policy development and decision-making.*
- *Has the backing and buy-in of senior staff (including sign-off).*
- *Draws on relevant equality information and the results of any engagement activity.*
- *Ensures timely and informed consideration of the aims of the general equality duty, and keeps a record of this.*
- *Records the reason for any decision that a policy has no relevance to the aims of the general equality duty.*
- *Requires decision-makers to consider taking steps to mitigate adverse impacts where they have been identified.*
- *Documents how information about the actual impact of the policy will be used to review the policy in future, if necessary.*
- *Is regularly reviewed to ensure that it is effective and up-to-date.*^a

Note

^a *Meeting the Equality Duty in Policy and Decision-Making.* Equality and Human Rights Commission, Oct. 2014. https://www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf

How are Equality Impact Assessments and Sustainability Appraisals linked?

Many local planning authorities carry out an Equality Impact Assessment as part of a wider Integrated Impact Assessment (IIA), which also includes:

- a Sustainability Appraisal, which incorporates the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 (commonly referred to as the Strategic Environmental Assessment Regulations);
- a Community Safety Impact Assessment (CSIA), required by the Crime and Disorder Act 1998 and the Policy and Justice Act 2006; and
- a Health Impact Assessment (HIA), which is non-statutory but commonly conducted and considered good practice.

Sustainability Appraisals (see Box 5) are designed to consider environmental, social and economic issues. However, they can often lack meaningful analysis of the social impacts of policies, particularly with regard to specific groups in society.

Carrying out an Integrated Impact Assessment can provide the opportunity for impacts to be considered more holistically and for analysis from (particularly the social aspects of) a Sustainability Appraisal to link in with analysis from an EqIA. At the same time, however, it is important to ensure that undertaking an EqIA as part of an Integrated Impact Assessment does not lead to the impacts on equality being evaluated in less depth than if the EqIA was not undertaken as part of an integrated assessment process.

Box 5 Sustainability Appraisals

National Planning Practice Guidance (PPG)^a describes the Sustainability Appraisal process as: *‘an opportunity to consider ways by which the plan can contribute to improvements in environmental, social and economic conditions, as well as a means of identifying and mitigating any potential adverse effects that the plan might otherwise have. By doing so, it can help make sure that the proposals in the plan are appropriate given the reasonable alternatives. It can be used to test the evidence underpinning the plan and help to demonstrate how the tests of soundness have been met. Sustainability appraisal should be applied as an iterative process informing the development of the plan.’*

Note

^a ‘Strategic environmental assessment and sustainability appraisal’. *Planning Practice Guidance*. Ministry of Housing, Communities and Local Government. Revision date Jul. 2019.
<https://www.gov.uk/guidance/strategic-environmental-assessment-and-sustainability-appraisal>

How should economic vulnerability and other ‘non-protected’ characteristics be considered?

As outlined earlier in the guide, the public sector equality duty specifically relates only to the protected characteristics. How then will the assessment processes evaluate the impact of policies on the wider characteristics of certain groups, considered in Box 3? There may be an assumption that economic vulnerability and the specific impacts of Local Plan policies on low-income communities do not need to be considered within an EqIA as the Sustainability Appraisal will pick up such issues. However, this assumption risks the impacts on low-income communities and other groups falling unaddressed into a gap between the two assessment processes.

Developing an EqIA methodology provides an opportunity to broaden the scope and build in socio-economic status and other factors. This will ensure that the impacts of Local Plan policy on **all** groups that are particularly at risk of disadvantage and social exclusion can be more holistically and more comprehensively assessed.

Some Local Plan EqIAs do systematically assess the impacts of policies on lower-income communities as an integrated part of the EqIA process – it is strongly recommended that this approach be adopted in all Local Plan EqIAs.

Section 4

The Equality Impact Assessment process

*'Having due regard to the aims of the general equality duty is about using good equality information and analysis, at the right time, as part and parcel of your decision-making processes.'*⁴

At what stages is the EqlA taking place? How is the EqlA informing policy development?

The purpose of carrying out an EqlA is to inform the development of policy in order to understand how policies can be strengthened so that they maximise the positive impacts of promoting equality and inclusion – and also, where the need arises, to remove or mitigate potential negative and discriminatory impacts of various proposals on specific groups.

The EqlA therefore needs to be carried out early on and then at multiple stages in the Local Plan development process to ensure that it can genuinely inform policy development and the development of alternative policy options in an iterative way through consulting with relevant groups and building an evidence base.

The assessment of policy impacts can be continued through detailed monitoring of policy outcomes, while the collected information can then be used in the adjustment of existing and the development of new policies.

Equality and Human Rights Commission guidance on the public sector equality duty is clear that EqlAs should not take place in a retroactive way once draft policy is fully formed; rather, they must be embedded within the policy development process:

*'Compliance with the general equality duty takes place before and at the time a particular policy is under consideration and when a decision is taken.'*⁵

Who will carry out the EqlA?

Should the assessment be carried out in-house or should it be outsourced? Capacity constraints may mean that some local planning authorities choose to have consultants undertake the EqlA; but, if the EqlA is outsourced, consideration needs to be given to how this separation of the EqlA from the in-house policy development process might impact the ability of planners to use the EqlA to genuinely inform the development of policy in an iterative way.

There are also implications for staff capacity and skills and for collaboration and the exchange of information between local authority teams if the process is outsourced, with the risk that planners may have a reduced understanding of the impacts of draft policy as they will have been less involved in

Notes

4 *Meeting the Equality Duty in Policy and Decision-Making*. Equality and Human Rights Commission, Oct. 2014. https://www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf

5 *Ibid.*

the EqIA process and will lack the skills and understanding to continue assessing policies on the basis of the differential outcomes for groups with protected characteristics.

It is important to note, as highlighted in guidance, that even if an EqIA is outsourced to a consultant it is still the local authority that is responsible for complying with the equality duty:

*'Decision-makers take responsibility for complying with the general equality duty with regard to all relevant functions. Responsibility cannot be delegated to external organisations that are carrying out public functions on their behalf.'*⁶

Building an evidence base through meaningful consultation

Planners must have information that is comprehensive and proportionate. In practice this means having sufficient good-quality information to understand the effects of Local Plan policy on the aims set out in the public sector equality duty, in order to be able to effectively evaluate policy impacts.

Equality and Human Rights Commission guidance advises that:

'Having due regard to the aims of the general equality duty requires public authorities to have an adequate evidence base for their decision-making. Collecting and using equality information will enable them to develop a sound evidence base. Case law has made clear that public

*authorities should ensure that they have enough relevant information to hand about equality issues to make informed choices and decisions, and to ensure that this is fully considered before and at the time decisions are taken.'*⁷

Building an evidence base will require ongoing and meaningful consultation with, and the participation of, distinct protected characteristic groups and others at risk of exclusion – a key part of which will require gathering information on how current policies and issues affect different groups of people in society.

These groups need to be involved not only in the gathering of evidence, but also in identifying relevant benchmarks and targets against which policies are assessed, and in developing appropriate methods of continuous engagement.

It is important to note that, while networks and organisations that support protected characteristic groups may have very valuable insights, engaging with these types of organisations does not negate the need to also engage directly with a representative amount of people with protected characteristics (and wider groups), as they have lived experience of the impacts of policy in relation to equality and inclusion.

The evidence base should be published and made publicly accessible, and local planning authorities must provide information on how evidence has been gathered.

Notes

- 6 *Meeting the Equality Duty in Policy and Decision-Making*. Equality and Human Rights Commission, Oct. 2014. https://www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf
- 7 *The Essential Guide to the Public Sector Equality Duty*. Equality and Human Rights Commission, Jan. 2011, updated 2014. https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf

Section 5

Monitoring actual impacts and reviewing policies

Equality and Human Rights Commission guidance is clear that public authorities covered by the general equality duty must ensure that:

*'Decision-makers review policies or decisions if circumstances change (e.g. if the make-up of service users alters). This is vital as the duty is a continuing one.'*⁸

While the EqlA should evaluate the expected effects of policies using a strong evidence base, contexts continually change and there may be unforeseen impacts. It is therefore vital that once a Local Plan is adopted, the actual impacts of policies within the plan are monitored and, as required, negative impacts are mitigated, either by updating Local Plan policy or by introducing additional planning policies through Supplementary Planning Documents or other relevant policies.

Key considerations within Equality Impact Assessments

Identification of positive and negative impacts, and mitigation

As planning is vital in promoting equality and inclusion and in reducing poverty, inequality and exclusion, it is important not only that EqlAs identify whether draft policies are expected to have positive impacts for certain groups, but also that they consider how policy can be developed to *maximise* positive impacts. This could be achieved by identifying additional and alternative policies, and also by strengthening the wording of existing draft policy to ensure that consideration of equality, inclusion and the needs of protected characteristic groups is built into policy phrasing.

Where negative impacts are identified, the nature and scale of these impacts must be understood. As outlined in Box 4, a good method requires decision-makers to consider taking steps to mitigate adverse impacts where they have been identified. Where possible, alternatives should be sought and draft policies should be reworked in order to eliminate the expected negative impact on

Note

8 *Meeting the Equality Duty in Policy and Decision-Making*. Equality and Human Rights Commission, Oct. 2014. https://www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf

specific protected characteristic groups. If the expected negative impacts are not fully eliminated through the re-working of policy, then specific mitigation measures should be outlined.

As stated in the introduction, planning often involves the (re)distribution of resources, which means that there will be negative impacts resulting from planning decisions. The key to an equitable approach to planning thus lies in assessing how these negative impacts are distributed across different groups and how, where possible, such impacts can be mitigated.

It is important to note that planning policy-making does not take place within in a vacuum. The ‘do nothing’ option can cause harm. There is therefore a need to consider whether policies go far enough to truly promote equality and inclusion, rather than simply maintaining the status quo.

Cumulative impact of policies

Local Plan policies are not developed in isolation from one another: the cumulative impact of combined Local Plan policies therefore also needs to be considered within EqlAs. This should involve assessing the impact on equality of policy decisions that are made together (for example understanding the combined impact of a policy on key worker housing and the policies on local employment protection) – this would mean ensuring that there is sufficient information to support an understanding of the cumulative or combined impact of these decisions.

The combined impact of Local Plan policy in the context of other non-planning factors also needs to be taken into account, such as changes to the Housing Benefits regime.

Intersectionality

Identity and personal characteristics are multi-faceted, and many people are part of multiple equality groups that may be at greater risk of disadvantage and social exclusion. In carrying out an EqlA it is not enough to consider the impact of policies on any one aspect of the protected characteristic groups; rather, it is important to note how these characteristics intersect and overlap with one another, leading to distinct patterns of disadvantage and discrimination.

Distinction within protected characteristic groups

Within the protected characteristic groups there are many sub-groups – for example, there are multiple different types of disability (mental and physical), and considerable diversity of distinct ethnicities that would be considered within the ‘BAME’ categorisation. Local Plan EqlAs need to be specific about how policies will impact distinct groups.

Where it is expected that one sub-group may experience positive impacts of a policy and another sub-group may experience negative impacts (for example children and older people under consideration of ‘age’), this cannot be considered to ‘average-out’; rather, the EqlA should clearly outline how policy is expected to impact the distinct groups.

Non-geographically defined communities and cross-boundary considerations

Communities are people that have formed a group around a shared interest, characteristic, incentive, motivation or identity aspect, or a unique spatial distribution or geography. While

it is common for local planning authorities to define communities spatially, with geographical boundaries, the reality is more fluid and complex.

Religious buildings, community spaces that are of specific importance to particular ethnic groups and LGBTQ+ venues are all examples of key social and cultural infrastructure that is often used and enjoyed by people from a wider geography than only those within a local authority boundary. Local Plan policy development and EqIAs therefore need to take into account the wider impacts of policy on populations beyond the local authority boundary; and in parallel they need to consider how impacts on groups in one local authority area (for example from the closure of key social infrastructure) may be part of wider trends, and so could therefore have a greater cumulative impact.



Trust for London

Tackling poverty and inequality

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