

<b>Report to:</b>	Council	<b>Date of Meeting:</b>	25 January 2018
<b>Subject:</b>	Review and update of the Council's Constitution - Planning Applications and Neighbourhood Plan, Cessation of Area Committees and Petitions Scheme		
<b>Report of:</b>	Chief Planning Officer and Head of Regulation and Compliance	<b>Wards Affected:</b>	All
<b>Portfolio:</b>	Cabinet Member Planning and Building Control Cabinet Member – Regulatory, Compliance and Corporate Services Cabinet Member – Locality Services		
<b>Is this a Key Decision:</b>	No	<b>Included in Forward Plan:</b>	No
<b>Exempt / Confidential Report:</b>	No		

**Summary:** A constitutional amendment report is required to deal with both implications arising from planning delegation changes, Neighbourhood Planning legislation requirements and changes arising from the cessation of Area Committees.

**Recommendation:**

That:

1. the Constitution be amended to reflect the proposals set out in paragraphs 2.3, 2.5, 2.8, 2.9, 3.4, 3.5 and 4.1 of this report;
2. the current responsibilities of Area Committees be transferred to the bodies as detailed in Appendix 1 to this report and the Responsibility for Functions of the Council's Constitution be amended accordingly;
3. all other references to Area Committees as detailed in Paragraph 10 of the report be removed from the Constitution; and
4. that the petition threshold set out in Chapter 12 Section J of the Council's constitution to trigger a debate at full Council be changed from 2750 signatures to 1000 signatures.

**Reasons for the Recommendation:**

To ensure that the Council's constitution is kept up to date.

**Alternative Options Considered and Rejected:** (including any Risk Implications)

Not to make any changes. This would mean that some straightforward and uncontentious planning (and other) applications would continue to be reported to Planning Committee which could reasonably be delegated to the Chief Planning Officer. The opportunity to save time and improve efficiency would therefore be lost. In relation to Neighbourhood Planning, the scheme of delegation does not reflect current legal and constitutional requirements.

Through the consultation process on the future of the Area Committees, a number of options were considered. The Cabinet has taken a decision to cease the operation of its three Area Committees and to replace them with Constituency Forums. The responsibilities of the former Area Committees need to be transferred to other meeting forums within the Council.

**What will it cost and how will it be financed?**

**(A) Revenue Costs**

None

**(B) Capital Costs**

None

**Implications of the Proposals:**

<p><b>Resource Implications (Financial, IT, Staffing and Assets):</b> There are no resource implications.</p>
<p><b>Legal Implications:</b> The Head of Regulation and Compliance has a duty to maintain and update the Council’s Constitution and this report seeks to achieve this function.</p>
<p><b>Equality Implications:</b> There are no equality implications.</p>

**Contribution to the Council’s Core Purpose:**

Protect the most vulnerable: Not applicable
Facilitate confident and resilient communities: Yes
Commission, broker and provide core services: Yes
Place – leadership and influencer: Not applicable
Drivers of change and reform: Not applicable
Facilitate sustainable economic prosperity: Not applicable
Greater income for social investment: Not applicable
Cleaner Greener Not applicable

**What consultations have taken place on the proposals and when?**

## **(A) Internal Consultations**

The Head of Corporate Resources (FD FD4944/17) has been consulted and any comments have been incorporated into the report. The Head of Regulation and Compliance is the report author. (LD1229/17)

## **(B) External Consultations**

Not applicable

## **Implementation Date for the Decision**

Immediately following the Council meeting.

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## **Appendices:**

Appendix 1 - Possible new places for Area Committee responsibilities to be carried out

## **Background Papers:**

There are no background papers available for inspection.

## **1. Background - Planning Applications and Neighbourhood Plan**

- 1.1 The Council's constitution defines those applications which should be determined by Planning Committee (chapter 7, sections 21 & 22). This includes 'major' applications which comprise proposals of 10 or more dwellings or new floor space of 1000 sq. metres or more.
- 1.2 A number of major applications have very little impact in the local area, generally have very little public and political interest and it is an inefficient use of resources to report them to Planning Committee. It also delays their determination and potentially holds up investment.
- 1.3 The constitution does not specifically refer to Neighbourhood Planning. However, a scheme of delegation was approved by Council in January 2013 (Minute 83). However a lot of the recommendations have been superseded by changes to legislation, our better understanding of the process, and the creation of the Cabinet Member: Planning and Building Control portfolio. Consequently, it is recommended that the Cabinet Member: Planning and Building Control is delegated authority to determine whether a submitted Neighbourhood Plan can proceed to examination.

## **2. Proposals currently reported to Planning Committee which could be delegated**

### Major applications and variation of conditions

- 2.1 Recent examples of 'major' applications which have very few implications and which, with hindsight, seem unnecessary to report to Planning Committee include:
- change of use to a training centre within an industrial building at Heysham Road
  - change of use to a trampolining centre within an empty unit at Aintree Racecourse Park
  - proposals for the recladding and variation of use of a retail unit on Tulketh Street.

Another example is the variation of conditions of all major applications.

- 2.2 If major proposals are contentious, this becomes obvious in a number of ways. They are likely to be 'called in', or they may be the subject of a petition, or they will attract quite a number of objections.
- 2.3 It is proposed that the following 'major' applications should be delegated to the Chief Planning Officer:
- those which are not 'called in' to be determined by Planning Committee
  - those which are not petitioned, and
  - those which have fewer than 5 planning related objections.

It is also recommended that applications to vary or remove conditions on major applications which are not contentious are not considered by Planning Committee.

### Applications subject to a petition

- 2.4 Currently, applications which are 'called in' by a Council Member, and where it is proposed to determine the application in line with the view of the Member who

made the request, are delegated to the Chief Planning Officer. However, if the application is the subject of a petition, the same approach does not apply – the petitioner would have to agree in writing to withdraw the petition before the decision could be made. This does not add any value to the process as it simply delays the decision.

- 2.5 It is proposed that any application which is petitioned but which is to be recommended for approval or refusal by officers in line with the wish of the petitioner will no longer be considered by Planning Committee. When such a situation arises the petitioner would simply be notified out of courtesy that the application will not be reported to Planning Committee.

#### Prior approval applications

- 2.6 Applications for 'prior approval' (e.g. for telecommunications masts) have stringent periods within which they are to be determined. If they are not determined within 56 days they are deemed to have been granted consent. If such an application is petitioned, and depending on when exactly the period ends within which neighbours are notified, the application may only be able to be reported to a meeting of Planning Committee which is beyond the last day for determination.
- 2.7 This leads to the anomaly that a controversial development could end up being granted 'deemed consent' by default, by virtue of a petition which requests that it be reported to a meeting of Planning Committee, thereby missing the statutory 56 day determination period.
- 2.8 When the Committee dates for determining the application fall outside the statutory determination period, the application should be reported to a Planning (Urgent Referrals) Committee. If an Urgent Referrals Committee cannot be arranged within the necessary timescale it is recommended that the decision will be taken by officers.
- 2.9 The constitution in chapter 7, sections 21 & 22, currently sets out which types of application will or will not be determined by Planning Committee. This could be interpreted to mean, for example, applications to discharge conditions which are no more than a technical assessment of details following the substantive decision. These are not planning applications. It is proposed to make clear that the reference to applications means 'planning applications'.

### **3. Development proposals submitted by Councillors and Officers and Council Development**

- 3.1 It is recognised that development proposals submitted by Councillors, Officers and their friends and relatives can give rise to suspicions of impropriety. The approach to considering such proposals is set out in chapter 12 of the constitution, paragraphs 165 & 166. It is not entirely clear from these paragraphs which applications should be considered by Committee and which could be delegated.
- 3.2 It could be interpreted that all applications of former members of staff and their close friends or relatives would have to be reported to Planning Committee. This could apply to a large number of people who no longer have a close connection with the authority and are in no position to influence the outcome of an application.
- 3.3 In addition, any applications made by (or on behalf of) junior members of staff across the Authority, who also are in no position to influence the outcome of an

application, must be reported to Committee.

- 3.4 It is proposed to restrict those applications being reported to Planning Committee to those submitted by or on behalf of all Members and senior Officers, and any member of staff of Planning Services.
- 3.5 Para 166 says that “Proposals for a Council's own development should be treated in the same way as those by private developers, in accordance with Circular 19/92”. It is proposed to delete this last phrase as this Circular is no longer valid in England.

#### **4. Neighbourhood Planning**

- 4.1 The Council's constitution does not specifically refer to Neighbourhood Planning. However, a scheme of delegation was approved by Council in January 2013 (Minute 83). However a lot of the recommendations have been superseded by changes to legislation, our better understanding of the process, and the creation of the Cabinet Member: Planning and Building Control portfolio. Consequently, it is recommended that the Cabinet Member: Planning and Building Control is delegated authority to determine whether a submitted Neighbourhood Plan can proceed to examination.
- 4.2 This is a matter of ensuring that the required the correct documentation has been submitted in accordance with Regulation 15 of the Neighbourhood Planning (General) Regulations 2012. These are:
- (a) a map or statement which identifies the area to which the proposed neighbourhood development plan relates;
  - (b) a consultation statement;
  - (c) the proposed neighbourhood development plan; and
  - (d) a statement explaining how the proposed neighbourhood development plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act.

#### **5. Area Committee Responsibilities**

- 5.1 Following a request from Cabinet the Overview and Scrutiny Committee (Regulatory, Compliance and Corporate Services), at its meeting held on 13 September 2016, approved the establishment of an Area Committees Working Group with a number of Terms of Reference and Objectives one of which was to:-
- “Review the findings of the public consultation exercise undertaken on the role of Area Committees, and the other issues set out in the report submitted to the Cabinet on 23 June 2016”
- 5.2 The Working Group met on numerous occasions and interviewed many witnesses; discussed and considered information requested at previous Working Group meetings; and considered models of community engagement suggested by Working Group Members. However, the Working Group could not reach a consensus on a set of recommendations. The Working Group's Final Report contained therefore three sets of recommendations for the Overview and Scrutiny Committee (Regulatory, Compliance and Corporate Services) to consider.
- 5.3 A copy of the Final Report can be viewed [here](#)

#### **6.0 Working Group Review of Area Committees**

6.1 At its meeting held on 12 September 2017 the Overview and Scrutiny Committee (Regulatory, Compliance and Corporate Services) considered the Working Group's Final Report. The Committee resolved that the Working Group's Final Report be referred to Cabinet with a request that Cabinet select an option as detailed in paragraph 6 and Appendix 3 of the Final Report.

## 7.0 Cabinet – 5 October 2017

7.1 The Cabinet at its meeting held on 5 October 2017 considered the Working Group's Final Report and recommended that the proposal submitted by Councillor Carla Thomas be approved, namely:-

That:-

- (1) The current Area Committee system in Sefton cease;
- (2) The current responsibilities of Area Committees be transferred to the Committees as detailed in [Appendix 1](#) attached to the report of the Head of Regulation and Compliance considered by the three Area Committees during the December 2015/January 2016 cycle;
- (3) Three Constituency Fora be established covering the Bootle, Sefton Central and Southport Constituencies with the following terms of reference:
  - A. To engage with local residents, community groups, partners, businesses, private sector organisations, the voluntary, community and faith sector and Parish Councils particularly in relation to the Sefton 2030 vision for the borough;
  - B. In areas covered by Parish Councils, to work closely with such Parish Councils and the Sefton Area Partnership of Local Councils by promoting and enhancing the [Parish and Town Council Charter for Sefton](#)
  - C. To consider complaints from constituents if it can be demonstrated that none of their Ward Councillor(s) has responded at all to a request for action;
  - D. To meet a minimum of twice per year ; and
  - E. To determine, with the consent of the three Ward Councillors, the devolved allocation of Ward funds on local priorities that would not otherwise be funded by Council budgets; that this funding continue to be administered by the Head of Communities; and any Ward budget over £10,000 not allocated at the end of the Municipal Year be transferred to the Cabinet Member – Communities and Housing for inclusion in the Community Transition Fund;
- (4) The Head of Communities to support the operation of the Constituency Fora;

- (5) The Head of Strategic Support to provide support on public engagement and consultation issues to the Constituency Fora;
- (6) Subject to operational requirements the use of Council buildings be allowed to host the Constituency Fora; and
- (7) To assist the role of Constituency Fora Operational Groups be established if deemed necessary by local Ward Members (in those areas where currently none exist) to work with partner agencies in their localities.

## **8.0 Overview and Scrutiny Committee (Regulatory, Compliance and Corporate Services) Special Meeting – 21 November 2017**

- 8.1 The decision of Cabinet referred to in 7 above was called-in by Councillors Dodd, Hands and Pullin. Accordingly, a Special Meeting of the Overview and Scrutiny Committee (Regulatory, Compliance and Corporate Services) was arranged to consider the call-in; and this meeting took place on 21 November 2017.
- 8.2 The Overview and Scrutiny Committee resolved that the decision of Cabinet be reaffirmed.
- 8.3 In accordance with recommendation (2) in paragraph 7.1 above a decision is required to formally adopt the changes to the Council's Constitution.

## **9.0 Other Options for Consideration**

- 9.1 Appendix 1 attached to the report of the Head of Regulation and Compliance considered by the three Area Committees during the December 2015/January 2016 cycle set out the responsibilities of Area Committees and suggested, if Area Committees were to cease, possible locations to discharge such functions. It is now recommended that the following changes be made to Appendix 1. There is one suggested amendment since the preparation of Appendix 1 for these purposes

With respect to the need to advise the Cabinet Member – Locality Services of the Area Committee's views on the proposed programme of works in the Integrated Transport Block of the Local Transport Plan, it was originally anticipated that these matters would be referred to the Licensing and Regulatory Committee. Further consideration has been given to the decision making route in this regard. As decisions are taken by the Cabinet Member the way for views to be communicated are via the Cabinet Member decision making route either in advance of the decision being made or through call in.

## **9.2 Functions/principles delegated that would not require specific re-allocation**

- 9.2.1 There are a number of functions/principles delegated that would not require specific re-allocation to another Council function/Committee meeting specifically, but would follow these principles wherever the work was undertaken in the future and these are set out below:-

- To ensure that any functions for which the Area Committee is responsible are carried out in a manner which is consistent and within the policies approved by the Council.
- To refer to the appropriate Cabinet Member, or to the Cabinet, Sefton Borough Partnership or key partner organisation any matters which are of a strategic, policy or resource nature.
- To ensure that any planned activity at an area level by the Area Committee is



- clearly aligned with the priorities set out in the Sustainable Community Strategy.
- To refer to the Cabinet any matter which contravenes, or appears to contravene, Council policy.
- To expend any budgets delegated to the Area Committee for the purposes in accordance with policies, rules and financial regulations of the Council. To commission services as and when appropriate using available budgets and to influence mainstream services which can be delivered at an area level.
- To refer to the Cabinet any matters which have financial implications which fall outside the budget delegated to the Area Committee<sup>1</sup>.

This would refer to the relevant committee in future.

- 9.2.2 It is recommended that the functions referred to in 9.1 and 9.2.1 above be removed from Appendix 1 to ensure that only formal amendments required for the Constitution are included in the Appendix.

### **9.3 Local Advisory Groups**

- 9.3.1 Area Committees had the power to appoint a Local Advisory Group in accordance with the guidelines set down by the Council. Now that a decision has been taken to cease the operation of Area Committees it is recommended that this function should be the responsibility of the newly established Constituency Fora and removed from Appendix 1.

### **9.4 External Funding**

- 9.4.1 Area Committees had the power to seek to secure external funding for matters within the responsibility of the Area Committee, subject to resource availability, and confirmation that such applications do not conflict with other applications made by the Council, nor conflict with overall Council policies. A caveat was placed on this function that if there are major financial implications in a decision proposed to be made or such a decision contravenes Council policy, then it shall stand referred to the Cabinet and/or Council for consideration as appropriate. Excluded from the delegations are any decisions in respect of the Council's or school employees. As with Local Advisory Groups in 9.3.1 above it is recommended that this function should be the responsibility of the newly established Constituency Fora and removed from Appendix 1.

## **10. General Constitutional Issues**

- 10.1 In order to remove all other references from the Constitution relating to Area Committees it is recommended that the following be deleted:-
- Paragraph E of Chapter 1 (Summary and Explanation)
  - Chapter 8 – Area Committees
  - All other individual references to Area Committees
- 10.2 Finally a decision made by the Audit and Governance Committee has not been brought to the attention of Council. The decision relates to the threshold for petitions to be received by Council that can trigger a debate. The constitution currently sets the threshold for a petition to be 2,750. The decision of the Audit and Governance Committee on 10 December 2014 was to change the threshold to 1000 signature. Council is asked to agree to this recommendation.

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<sup>1</sup> This would refer to the relevant committee in future.

Possible new places for Area Committee responsibilities to be carried out

Current responsibility	Possible new location for the responsibility
To consider, review and monitor all services and activities provided by the Council, Sefton Borough Partnership and key partner organisations which impact at an area level.	Such review could be discharged through the Overview & Scrutiny function
All process to follow the Council's Public Engagement and Consultation Standards.	Self-evident
To appoint or nominate representatives on outside bodies where appropriate.	Council Cabinet
To hear and consider petitions relating to matters within the purview of the Area Committee (N.B. petitions relating to specific planning or licensing applications must follow procedures laid down in the Council and Committee Procedure Rules set out in Chapter 4).	Licensing & Regulatory Committee <sup>2</sup>
To consider the outcome of consultation and the resultant proposals in respect of the following schemes:  a) the making of Traffic Regulation Orders;  b) details of improvements to highways;  c) cycle routes; and either  d) approve the scheme as proposed  e) approve the scheme with minor amendments  f) refer the scheme to the Cabinet Member – Locality Services indicating the Area Committee's view on how the proposal should be progressed.	Licensing & Regulatory Committee
The determination of Rights of Way issues.	Licensing & Regulatory Committee
The determination of applications for the creation, diversion and extinguishment of footpaths.	Licensing & Regulatory Committee
The renaming of streets.	Licensing & Regulatory Committee
In connection with the on-street Pay and Display Scheme, to determine whether residents' parking permits should be issued, where there is a dispute as to eligibility.	Licensing & Regulatory Committee
To give approval for Gating Orders under Section 129 (A-G) of the Highways Act 1980.	Licensing & Regulatory Committee

<sup>2</sup> Any reference to the Licensing and Regulatory Committee would require amendments to their Terms of Reference in the Constitution which would be achieved through the usual means.

To determine requests for the use of parks in those areas where officer delegation is inappropriate (subject to the Council's overall policies).	Licensing & Regulatory Committee
To give approval for, and determine the location of, public donations (for example park benches and memorial trees).	Licensing & Regulatory Committee
Community Centres - to be responsible for the appointment of local authority representatives on management committees of community centres.	Council/Cabinet
Approval of matters relating to the review of Polling Places/Stations, except when consequent on the outcome of a Periodic Electoral Review.	Licensing & Regulatory Committee
To approve routes for horse drawn omnibuses	Licensing & Regulatory Committee
Determination of applications for permission to site mobile phone masts on Council-owned land in accordance with the Council's protocol.	Licensing & Regulatory Committee