

Report for: Regulatory Committee – 14th January 2021

Title: Information report responding to Member comments in the Review of Member Allowances that Regulatory Committee should be formally reconstituted as two separate Committees – a Planning Committee and a Licensing Committee

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Ward(s) affected: N/A

**Report for Key/
Non-Key Decision:** Non-Key Decision

1. Describe the issue under consideration

- 1.1 In the Review of Members' Allowances for the Municipal year 2020/21, the independent person, conducting this review, outlined in his report, to the 2nd of March 2020 Standards meeting, that there seemed to be consensus around the proposition that the Regulatory Committee should be formally reconstituted as two separate Committees – a Planning Committee and a Licensing Committee. It was also suggested that the SRA [Special Responsibility Allowance] for the Planning Committee Chair should be in line with the current SRA for the Regulatory Committee and that the SRA for the Licensing Committee Chair should be in line with the SRA currently paid to the Vice Chair of the Regulatory Committee. These views had been expressed by members participating in interviews and questionnaires.
- 1.2 An initial paper outlining the merits and disadvantages of keeping to the existing arrangements or deleting the Regulatory Committee and separating out its responsibilities, functions was considered at Standards Committee on the 2nd of November.
- 1.3 The Standards Committee agreed to further explore the separation of the Regulatory Committee functions into separate Licensing and Planning Committees. It was agreed that a report would be presented to the next Committee meeting, including information relating to whether and why two Licensing Sub-Committees would be required, the structure used when these two functions were previously separated in Haringey, and the potential impact on the number of meetings if the functions were separated. It was also noted that any information or proposals should be circulated to the Regulatory Committee at their meeting in January 2021 for comments before being considered by the Standards Committee.

1.4 This report responds to this action and also comments on how the following remaining non - executive and non licensing related functions of the Regulatory Committee terms of reference are taken forward. These are as follows:

- *Making informal recommendations to the Cabinet and full Council on local development documents, the local development framework, the statement of community involvement and any other planning policy matter.*
- *Reviewing all Council plans and policies on any licensing, planning or regulatory matters, exercising an overview in relation to common themes and making informal recommendations on these matters to Cabinet and full Council.*
- *Making informal recommendations to the Cabinet and other bodies on service delivery, grant aid, commissioning and procurement matters when these involve or relate to licensing, planning, conservation or regulatory issues.*

2. Cabinet Member Introduction

N/A

3. Recommendations

- 3.1 To note the information contained in the report and provide comments to Standards Committee for consideration at their meeting on the 25th of January 2021.

4. Reasons for decision

The Standards Committee has responsibility for considering amendments to the Constitution and recommending proposals to Full Council for approval.

5. Alternative options considered

Not seeking the comments of Regulatory Committee would not provide the information needed to support Standards Committee in formulating their views and recommendations to the Council on this matter.

6. Background information

- 6.1 Generally, most functions of the Council are 'executive' and the responsibility of the Executive [Cabinet]. In law some functions are prevented from being exercised by the Executive. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) set out which functions are non-executive. Regulation 2 Schedule 1 of the Act sets out the functions which cannot be the responsibility of Cabinet and these have been allocated to Regulatory Committee, Corporate Committee, Pensions and Staffing and Remuneration Committee.
- 6.2 The two main bodies of the Council dealing with non – executive functions as part of Regulation 2 Schedule 1 of the Act are the Regulatory Committee and Corporate Committee.

- 6.3 Regulatory Committee was established in 2011, following a governance review, led by the principle of reducing the number of non- executive committees together with a reduction in the number of SRAs.
- 6.4 The Regulatory Committee functions as set out in the Constitution, at Part Three Section B, take forward the following functions:
- The Council's Statutory Licensing Committee under the Licensing Act 2003. [Meaning that there is a need to have 10 to 15 Members to comply with the legislation as a Statutory Licensing Committee].
 - Exercising Council's functions under the Gambling Act 2005
 - Acting as a Non Statutory Committee for Licensing, Town Planning, and other general regulatory matters.
- 6.5 The Regulatory Committee, delegates its functions relating to Town Planning (development management planning applications) to the Planning Sub - Committee which it establishes on an annual basis and further delegates its statutory Licensing and Gambling Act 2005 functions to Licensing Sub - Committee A and Licensing Sub-Committee B.
- 6.6 Therefore, the Regulatory Committee is left to consider Licensing policy issues, procedures and standard terms and conditions. In relation to Planning, the Regulatory Committee will generally make informal recommendations on Planning Policy and related matters to Cabinet and Full Council and also consider Planning Team performance, updates on the work of the Planning service, and other guidance important to their role as planning decision makers.

The current arrangements are:

- The Planning Sub-Committee concentrate on Town Planning (development management planning applications) and there are several applications to consider monthly linked to the significant regeneration in the borough. Members will participate in site visits, consider pre- applications and then decision making on Planning Applications.
- There are 13 members of Regulatory Committee and this allows a wider pool of councillors to be trained and participate in Licensing Committees and Planning Sub-committees. If members of Licensing Subcommittee A or B are unable to participate then other members on Regulatory Committee can substitute.
- Members of Regulatory Committee can sit on both Planning Sub Committee and Licensing Sub Committees and allows wider knowledge of these regulatory areas to be developed. This then allows them to be able to contribute to the policy discussions on Licensing and Planning and make informal recommendations to the Cabinet or Full Council.

Issues

- 6.7 The workload for councillors sitting on Regulatory Committee, Planning Sub Committee and Licensing Sub Committees can be intensive, especially if there are additional meetings added. This has been an issue highlighted by the Standards Committee and commented on in the Member's Allowances Review.
- 6.8 Most other boroughs in London have a parent Planning Committee and parent Licensing Committee with Licensing sub Committees to consider functions under the Licensing Act 2003 and Gambling Act 2005. This is set out in Appendix A.

In the Municipal year 2019/20

- There were 10 Planning Sub-Committee meetings
- There were 7 Regulatory Committee meetings [2 of these were meetings, related to membership changes and considering an urgent decision which was Covid related on pavement licensing]
- There were 5 Special Licensing Committee meetings [membership is chosen from whole of the Regulatory Committee]
- There were no meetings of Licensing subcommittee A
- There were 4 meetings of licensing subcommittee B

Legal, Governance Implications

- 6.9 Deleting the Regulatory Committee and replacing this with a Licensing Committee, would make this the Council's Statutory Licensing Committee under the Licensing Act 2003. Standards Committee proposed also having only one Licensing Sub Committee to consider required applications instead of two and calling special meetings of the Sub Committee when needed. It is proposed that the Chair of the main Licensing Committee would also be the Chair of the Licensing Sub Committee. This would mean that there is not a need for an additional SRA to be added to the Member's Allowance scheme. Legal services advise that this proposal allows the Council to meet its licensing duties. However, the practical implications to consider are:

- A Licensing Sub Committee can only consider a maximum of two applications per meeting and legal services still recommend adding in 2 meetings per month to the Council calendar to provide certainty to the Licensing team of meeting dates and timescales to adhere to when putting forward applications for consideration.
- The main Licensing Committee would need to have a minimum of 4 meetings added to the Council Committee Calendar to consider required reports in the terms of reference of the current Regulatory Committee as follows:

Relating to responsibility for monitoring the operation of the Acts licensable activities and gambling in the Borough.

To establish the Licensing Sub-Committees and to agree the delegation of functions to the Sub-Committees and to officers.

To receive reports on the matters in (a) above and on the functions delegated to the Licensing Sub-Committees and to officers. To call for a report on any individual case.

To determine the procedures to be followed in handling applications, notices, representations and all hearings, subject to the relevant Regulations.

, to determine the fees payable for applications for premises licences and related matters under the Gambling Act 2005.

In a Council Election Year when there is a need to hold a hearing in the period between Election day and the Annual Meeting of the Council, those members of the Committee who are re-elected as councillors shall meet as the Committee (subject to there being a quorum of 3 members) in order to exercise any of the functions of the Licensing Sub-Committees, or of the Committee under above, and shall elect a Chair for the meeting.

In its capacity as the non-statutory Committee exercising other non-executive functions the Committee has the following functions:

Exercising the functions which are stated not to be the responsibility of The Executive/Cabinet In Regulation 2 and Schedule 1, Paragraph B (Licensing and Registration) of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and in any Statute or subordinate legislation further amending these Regulations.

The Committee's functions are to determine all policy issues, procedures and standard terms and conditions relating to the non-executive licensing functions but exclude decisions in individual cases which are delegated to the Licensing Sub-Committees. The Sub-Committee's remit includes the licensing of street trading, scrap metal dealing, special treatment premises, sex establishments and dog breeding establishments.

Formulating, reviewing and approving for consultation the Statement of Licensing Policy under the Licensing Act 2003 and recommending it, and any revisions to it, to full Council for adoption.

Being consulted informally on the review and determination of the Statement of Gambling Policy, including procedures for Council consultation with external stakeholders, and making recommendations on these matters to the Cabinet.

6.10 The membership of the main Licensing Committee would comprise the same number as currently held by the Regulatory Committee to meet requirements of the Licensing Act 2003 and meet proportionality requirements so this would be 13. This would allow a wider pool of councillors to substitute on Licensing Sub Committee meetings.

6.11 Regulatory Planning related items
These include:

- Making informal recommendations on Planning policy matters to Cabinet and Full Council,
- Considering Planning Team performance,
- Local Plan updates,
- Considering government and regional guidance which is important for informing Planning members wider view of planning matters
- and other non -licensing related planning matters that would normally be considered by Regulatory Committee.

Potential Options for further consideration and comment

- 6.12 **Option 1 – Adding the non-executive Planning related functions of Regulatory Committee, including making informal recommendations, to Cabinet and Council, to the current Planning Sub Committee terms of reference and making this a Committee of the Council.** Further to considering the terms of references of Planning Committees of other London boroughs attached at appendix 1, there are none similar to Haringey which include the functions outlined at paragraph 1.4. Even where you have a main Planning Committee with Sub Committees, the policy input seems to be taken forward by Cabinet, pre -scrutiny and Cabinet related sub bodies.

Implications

- 6.13 Legal services advise that there is not anything to legally prevent members of Planning making informal recommendations regarding development plan documents, other planning plans/policies, like the Regulatory Committee currently does. As currently the case, Cabinet are not obliged to accept and take forward these informal recommendations.
- 6.14 Full Council would be the parent body of the Planning Sub-Committee. Therefore, if there was an occasion where the Sub-Committee could not make a decision on an application or report they would be able to refer this to Full Council. This would mean that all Councillors would need to have Planning training and keep their training updated which would have resource implications.
- 6.15 There would need to be an update of Constitution and review of any officer delegations which involve Regulatory Committee and update of the Planning Protocol.
- 6.16 There are currently 10 meetings of Planning Sub-Committee added to the Council Committee Calendar and these are needed to allow consideration of the current volume of planning applications. There would need to be a further 4 meetings added where the Committee could meet to consider reports as set out at paragraph 6.11.
- 6.17 There is a need to explore The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) which sets out

which functions are non-executive, to ensure that any regulatory matters that cut across licensing and Planning would be appropriately designated.

Option 2 – Regulatory Committee deleted and Planning Committee established as a Committee of the Council, with the current Sub-Committee terms of reference

- 6.18 Policy reports progressing directly to Cabinet and then Full Council without any informal recommendations from Regulatory Committee.
- 6.19 The reports considered at 6.11 could be considered by the relevant Scrutiny Panel.

Implications.

- 6.20 Regulatory Committee Members comprise of a number of Planning members and are able to put forward local and practical views from their experience of considering planning applications to the Cabinet and/or Full Council who will be considering policies at a strategic level. Currently, where planning policies are progressing from Cabinet to Full Council for approval, such as the Local Plan, they have already been socialised with members and issues resolved before adoption is sought.
- 6.21 The Scrutiny Panels have responsibility for monitoring performance and could consider reports on AMR and Planning performance. This information could also be considered by Planning Committee informally.
- 6.22 There would need to be consideration of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) which sets out which functions are non-executive, to ensure that any regulatory matters that that are not licensing related would be appropriately designated to the terms of reference of a Council Non Executive Committee which would be Corporate Committee.

Option 3 - Regulatory Committee remains as a Committee of the Council keeping only Planning related functions and Regulatory functions which are not licensing related

- 6.23 Regulatory Committee would continue to consider the functions set out at paragraph 1.4 and be the parent body for Planning sub Committee. The separate main Licensing Committee would be added to the Committee structure and be a separate Committee as outlined at paragraph 6.9.

Implications

- 6.24 This would prevent Full Council having to consider planning applications that the planning sub-committee are not able to take a decision on.
- 6.25 Cabinet are still not obliged to accept and take forward informal recommendations on planning policy from the Committee .

Option 4 – To keep current Regulatory Committee without establishing a Licensing Committee and only having one Licensing Sub Committee.

- 6.26 Regulatory Committee would continue to consider the functions set out at paragraph 1.4 and be the parent body for Planning Sub Committee.
- 6.27 Cabinet are still not obliged to accept and take forward informal recommendations on planning policy from the Committee.
- 6.28 This would prevent Full Council having to consider planning applications that the Planning Sub-Committee are not able to take.
- 6.29 A Licensing Sub Committee can only consider a maximum of two applications per meeting and legal services still recommend adding in 2 meetings per month to the Council calendar to provide certainty to the Licensing team of meeting dates and timescales to adhere to when putting forward applications for consideration.
- 6.30 Regulatory Committee Members are asked to comment on the issues set out above to inform an update report to The Standards Committee on the 25th of January. The Standards will consider this information and decide on next steps.

7. Contribution to strategic outcomes

The Council's Constitution supports the governance of the Council and its Decision making thereby assisting the Council to meet its strategic outcomes.

8. Statutory Officers comments (Chief Finance Officer, Head of Procurement), Assistant Director of Corporate Governance, Equalities)

There are no financial implications

Head of Legal and Governance

The legal comments are contained in the report.

9. Use of Appendices

Appendix A - Information on other London Borough Regulatory arrangements

10. Local Government (Access to Information) Act 1985

Member Allowances review 2020/21