

Appendix 5

Regulatory Committee Working Group 11th of February 2021

Introduction

1. This briefing note responds to the issues raised at Regulatory Committee on the 14th of January 2021 when options were considered for separating out the Planning and Licensing functions of the Regulatory Committee. There were 4 options considered along with their implications. These were as follows:

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.

Option 2 – Regulatory Committee deleted and Planning Committee established as a Committee of the Council, with the current Sub-Committee terms of reference. This would mean Policy reports progressing directly to Cabinet and then Full Council without any informal recommendations from a non -executive Committee. Planning service performance reports and other reports which were not related to applications could be considered by the relevant Scrutiny Panel.

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

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

- 1.1 The discussion at Regulatory Committee raised a number of important points and It was suggested that some members of the Regulatory Committee could meet informally as a smaller group to consider their views and the potential options in greater detail. It was noted that any conclusions and proposals would need to be considered by the Regulatory Committee and the Standards Committee before any proposals were recommended for adoption at the Annual Council meeting on 24 May 2021. A reminder of the discussion is included at section 2.

- 1.2 It was noted that Option 1 and Option 3 seemed to be the favoured options and these have been developed further in this paper with an understanding of the how they could work within existing resources and without significant impact on the existing governance arrangement whilst also responding to the issues raised by Members. These developed options are at section 3 and the previous report considered by Regulatory committee is also attached as appendix 1 for reference to options 2 and option 4 if needed.

2. Background

The Regulatory Committee met on 14 January 2021 and their comments were as follows:

- a. The Regulatory Committee currently discussed more planning issues than Licensing issues; it would be useful either to receive service updates at the Regulatory Committee or to have a separate Licensing Committee that could focus on licensing issues.
- b. The Regulatory Committee provided important feedback on planning and licensing issues and this had resulted in positive changes, such as the introduction of apprentices in Building Control; there were concerns that this role would be lost if the Regulatory Committee was divided into a Planning Committee and a Licensing Committee.
- c. It was considered that any changes should aim to reduce the workload of councillors who were currently attending a lot of meetings of the Regulatory Committee, Planning Sub-Committee, and Licensing Sub-Committee.
- d. It was noted that Regulatory Committee was the only committee where a Vice-Chair received a Special Responsibility Allowance (SRA) and that it was useful to have consistency. It was also noted that, if the Regulatory Committee was divided, there would still be the same number of SRAs – the Planning Committee Chair would receive the same SRA as the Regulatory Committee Chair and the Licensing Committee Chair would receive the same SRA as the Regulatory Committee Vice-Chair.
- e. Generally, the Committee believed that it would be easier to have one Planning Committee that considered planning applications and matters of

planning policy and one Licensing Committee that considered licensing applications, matters of licensing policy, and the statutory licensing functions. It was suggested that policy and statutory issues could be considered quarterly by each committee. Some members expressed concerns that this may not result in a reduced workload for councillors.

- f. It was considered that it would be inconvenient for Council to be the parent committee for the Planning Committee as this would require all Council members to be trained in planning matters. Although, it was noted that it was very unlikely that the Planning Committee would refer any applications to the parent committee.

- g. It was noted that, under the Licensing Act 2003, a Licensing Committee must have at least 13 members. Some members considered that this would involve an increase in the number of councillors sitting on committees for planning and licensing compared to the current arrangements for the Regulatory Committee. Other members considered that some councillors could sit on the Planning Committee and the Licensing Committee and that there may not be an increase in workload. It was also noted that, if there was a parent Planning Committee and Licensing Committee, these would meet infrequently.

- h. It was commented that some existing committees could benefit from a reduction in size and it would be useful to consider the impact of splitting the Regulatory Committee on committee memberships and meeting frequency, including the impact on other committees, such as the Corporate Committee.

- i. Some members noted that the planning and licensing functions had been joined about 10 years' ago, creating the Regulatory Committee, and this was designed to reduce costs. It had been considered that one, core committee for planning and licensing was a better approach.

3 - 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.

Additional Information

3.1 If Option 1 is taken forward and Planning Committee is established as a Committee of the Council along with the Licensing Committee at the Annual Council meeting, there would need to be 4 additional meetings of Planning added and in practice the Licensing Committee would replace the Regulatory meeting dates. This would lead to a net increase in 4 meetings for Members. To mitigate this net increase, it is proposed that there are 2 main Licensing Committees added to the calendar one in May to establish the sub committees and one in January to consider policies and agree required fee charges. It is also proposed to only add 3 additional Planning meetings to cover the quarterly updates and reports set out in 6.11. This would mean a net increase of only 1 meeting.

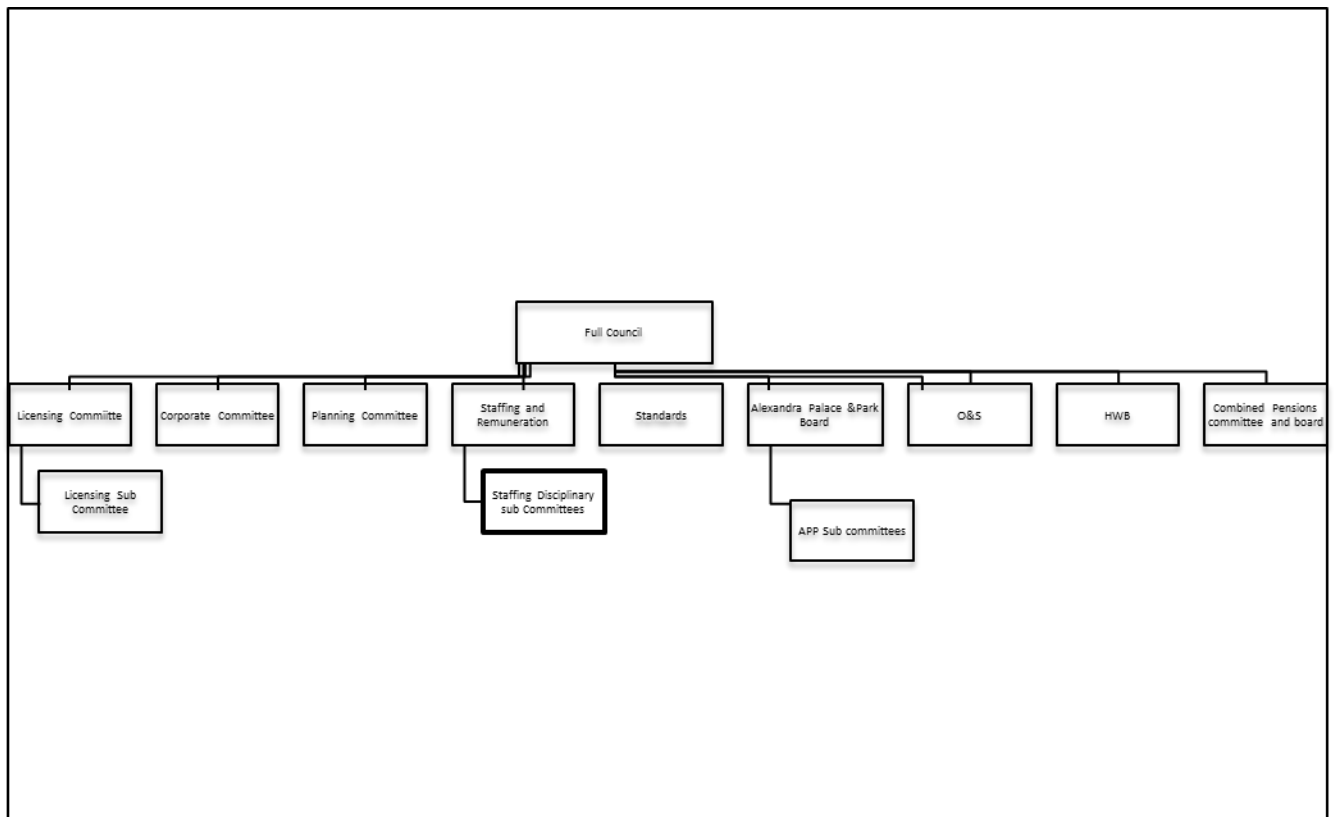
3.2 The number of licensing related items likely to come forward in 2021/22 are as follows.

- The years various licences issued under delegated authority
- Any Licensing Court cases summed up
- Any sub committee cases summary
- Points of learning.

In the years that the Statement of Licensing Policy or Gambling Policy needed to be considered (Gambling every 3 years, Licensing every 5 years) we would need to have special meetings. The Gambling Policy is normally considered by Reg Committee in July whilst it is out to consultation, so that the Committee can feedback to Cabinet in October and it can be recommended to Full Council in November. That work will be happening this year, therefore a Special Licensing Committee meeting is likely to be required in July 2021. The Statement of Licensing Policy will be reviewed during 2025. It is normally considered by the Regulatory Committee before and after it goes out to consultation, usually in September and November before recommending to Full Council in November.

If there was only one Licensing Sub Committee, ideally it should meet twice a month due to the timescales for hearing applications and reviews and the fact that the committee can only realistically deal with a maximum of 2 hearings in one evening. Where necessary, special meetings will need to be called e.g. to deal with TENS applications.

The Committee structure would look as follows:



Note

- 3.3 Overview and Scrutiny is not an ordinary Committee under section 102 of the Local Government Act 1972. Although we would still apply political proportionality rules we would not count these seats in the overall allocation

The political balance rules are disapplied by the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013/218). The membership of the Health and Wellbeing Board is prescribed at section 194 of the Health and Social Care Act 2012.

These Committees are included above for ease of reference.

Impact on Seat Numbers would be as follows:

- 3.4 The Annual Meeting of the Council appoints Committees of the Council in accordance with Article 4.02(k) of the Constitution. The Council is required to comply with the provisions of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990 in terms of political balance when appointing 'ordinary' committees – that is, committees appointed under section 102(1)(a) of the Local Government Act 1972.

- 3.5 These rules provide that seats on 'ordinary' committees must be allocated in line with the following principles, so far as reasonably practicable:
- (a) that not all the seats on a body are allocated to the same political group;
 - (b) that the majority of the seats on the body are allocated to the political group which has the majority of the Council's membership;
 - (c) that, subject to principles (a) and (b) above, the proportion of seats allocated to each political group out of the total number of seats across all the ordinary committees of the Council shall be in the same proportion as their share of membership of the Council as a whole; and
 - (d) that, subject to paragraphs (a) to (c) above, the number of seats on each individual body shall be allocated to each political group in the same proportion as their share of membership of the Council as a whole.
- 3.6 The number of seats currently available on ordinary committees is 47 . The Independent Member indicated in October 2020 that she did not want a council seat and in consequence, Labour received 34 committee seats (72.3% of the total number of seats available) and Liberal Democrats 13 seats (27.65% of the total number). Both the Labour and Liberal Democrat groups have a percentage of committee seats that is slightly higher than their percentage share of the total number of Councillors.
- 3.7 According to the above, it is a legislative requirement to have between 10 and 15 members on the main Licensing Committee. Therefore, according to principles of allocation as set out above, the main Licensing committee could have 11 seats and Planning committee could have 11 seats.
- 3.8 The number of seats available on ordinary committees increases to **56**. There would be 40 seats available to Labour and 16 seats available to the Liberal Democrat Group.

Implications

- 3.9 In practice, the political chief whips can choose the same members to sit on both Planning Committee and Main Licensing Committee if they want to maintain the close connection between these functions. The more frequent meetings are likely to be Planning Committee meetings. Licensing would have a one Sub Committee and be able to substitute members on the Licensing Sub Committee where appropriate or be able to hold special Licensing sub committees from the pool of Members sitting on the Main Licensing Committee. This model also provides the choice of distributing Licensing and Planning Committee memberships in the political groups so that the same members are not having to attend both Licensing and Planning Committees. The Chair of the Main Licensing committee could be the Member of the

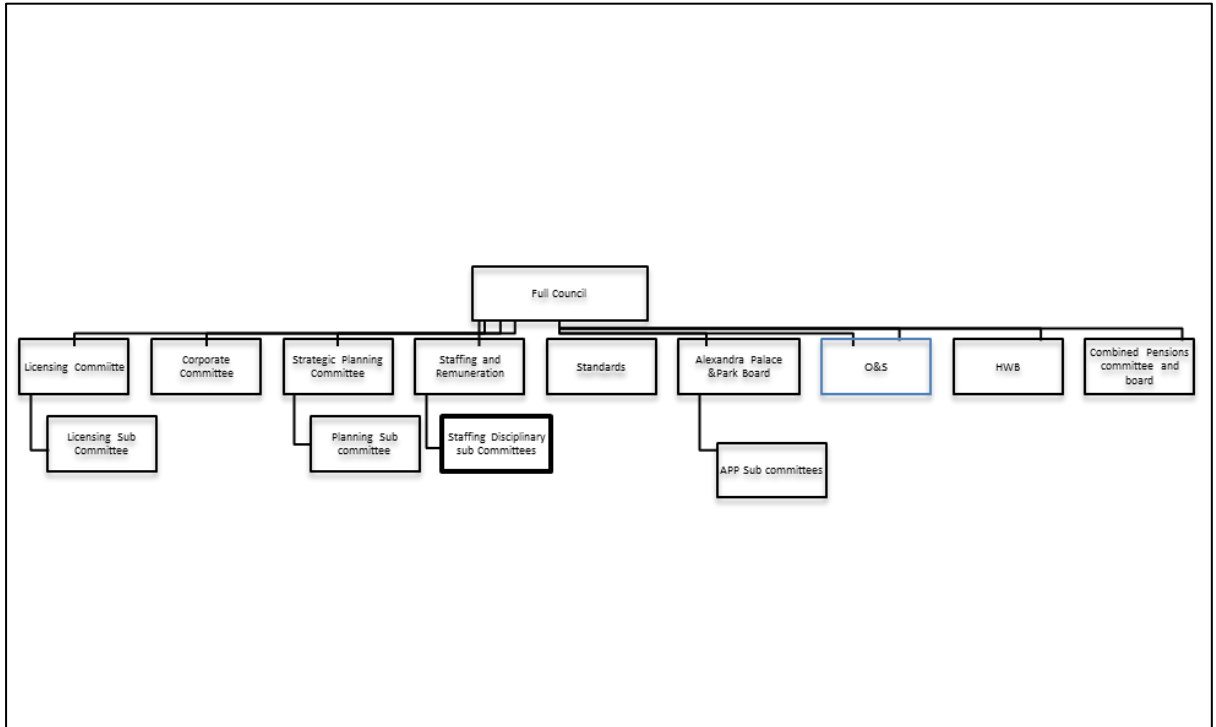
Planning committee and maintain the role of vice chair in line with previous SRA requirements.

- 3.10 There could be a query on reducing Corporate Committee to a lesser number of seats [i.e. 5 seats] as the Chief Whips will need to ensure members are available to fill the additional seats - this would mean total number of seats available is 51. This would mean 37 seats to Labour and 14 seats available to the Liberal Democrats. There would need to be a wider consultation with Finance, Audit, elections and health and safety officers about this and all Members to understand if any implications.
- 3.11 The risk set out at Paragraph 6.15 would remain. The public will be accustomed to Planning committee meeting to consider applications and it would need to be clearly set out in the agenda when the Committee are taking forward the requirements of their terms of references related to making informal recommendations to Cabinet or considering Planning service performance. There would unlikely be enough time of the agenda to consider both Planning Applications and reports relating to paragraph 6.11.
- 3.12 The terms of reference would as set out at Annex 1.

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

- 3.13 A Strategic Planning Committee is created as a Committee of the Council with a Planning Sub Committee along with the main Licensing Committee. There would need to be 4 additional meetings of Strategic Planning added to the Council Committee Calendar and Licensing Committee would replace the Regulatory meeting dates. There could be a net increase in 4 meetings for members. To mitigate this net increase, it is proposed that there are 2 main Licensing Committees added to the calendar one in **May** to establish the sub committees and one in **January** to consider policies and agree required fee charges. It is also proposed to only add 3 additional Strategic Planning meetings to cover the quarterly updates and reports set out in 6.11. This would mean a net increase of only 1 meeting.
- 3.14 The number of Licensing related items likely to come forward in 2021/22 are as set out at paragraph 3.2.
- 3.15 The Committee structure would look as follows: [The Regulatory Committee name has been replaced with a new name strategic Planning Committee - Members can comment on this new

name]



Note

3.16 As set out in paragraph 3.3.

Impact on Seat Numbers would be as follows:

- 3.17 As set out in paragraphs 3.4 to 3.6 and according to principles of allocation as set out above, the main Licensing committee could have 11 seats and Strategic Planning committee could have 13 seats with the Planning Sub Committee having 11 seats.
- 3.18 The number of seats available on ordinary committees increases to 56. There would be 40 seats available to Labour and 16 seats available to the Liberal Democrat Group.
- 3.19 In practice, the political chief whips can choose the same members to sit on both Strategic Planning Committee and Main Licensing Committee if they want to maintain the close connection between these functions. The Strategic Planning Committee would have 2 extra members to the Planning Sub Committee, similar to the current structure with Regulatory Committee and the Chief Whips may want these 2 additional members to be members of the main Licensing committee to maintain the regulatory expertise on the main strategic Committee. The Chair of the Main Licensing Committee could be the Member of the Strategic Planning Committee and vice chair and also be a member of the Planning Sub Committee and Vice Chair.

- 3.20 Again, there could be a query on reducing Corporate Committee to a lesser number of seats [i.e 5 seats] as the Chief Whips would need to ensure members are available to fill the additional seats - this would mean total number of seats available is 51. This would mean 37 seats to Labour and 14 seats available to the Liberal Democrats. There would need to be a wider consultation with Finance, Audit, Elections and Health and safety Officers about this and all Members to understand if any implications.
- 3.21 A potential terms of reference for this Option is set out in Annex 2.
- 3.22 Members are asked to comment on the information above and recommend an option for Regulatory Committee for the meeting on the 25th of February and Standards committee on the 2nd of March 2021.

Annex 1

Option 1 - Terms of Reference Planning Committee

Red -Current Regulatory Committee Terms of reference for Planning functions

(d) Making informal recommendations to the Cabinet and full Council on local development documents, development plan documents, the local development framework, the statement of community involvement and any other planning policy matter;

(e) 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;

(f) 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.

Red - Planning Terms of reference 2020

There is a Protocol setting out how members of the Planning Sub-Committee will exercise those functions, including behaviour in relation to applicants, residents and other third parties, to ensure the probity of planning transactions and the highest standards expected in public office. This protocol is supplementary to the Members' Code of Conduct at Part 5 of the Constitution.

The Sub-Committee has all the functions which are set out below and which are stated not to be the responsibility of the Executive in Regulation 2 and Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and in any statute or subordinate legislation further amending those Regulations (references to paragraphs are to those in Schedule 1):

(a) paragraph A - Town Planning Functions

(A) planning applications for the erection of 10 or more dwellings and where the officer recommendation is for approval;

(B) planning applications for changes of use of 1000 sq. metres or more of gross internal floor space and where the officer recommendation is for approval;

(C) planning applications for the erection, or extension of non-residential buildings where the new build is 1000 sq metres or more of gross internal floor space and where the officer recommendation is for approval;

(D) unless otherwise agreed with the Chair of the Planning Sub-Committee, planning applications either:

(i) for major development as defined by the Town and Country Planning (Development) Management Procedure (England) Order 2015 (or any replacement legislation) and where the officer recommendation is for approval; or

(ii) where a legal agreement relating to that development is required; or

(iii) where the recommended decision would be contrary to the development plan;

(E) unless otherwise agreed with the Chair of the Planning Sub-Committee, applications submitted by, or on behalf of the Council;

(F) planning applications on Council owned land, where the Council is not the applicant, where significant material planning objections are received during the consultation process and which the Director, in consultation with the Chair of the Planning Sub-Committee, determines should be subject to members' consideration;

(G) planning applications submitted by or on behalf of members; or employees within the Planning Service or senior employees elsewhere in the Council; or their spouses, parents or children;

(H) any planning application to amend an application or vary conditions or a legal agreement previously decided/imposed by Planning Sub-Committee and which the Director, in consultation with the Chair of the Planning Sub-Committee, considers to constitute a major or significant change;

(I) any planning application where there have been objections from a single councillor of the Ward within which the application site is situated and/or a local community body and/or a local residents' association, and a written request setting out the planning reasons for the matter to be referred to the Planning Sub-Committee has been made before the expiry of the consultation period, and which the Director in consultation with the Chair of the Planning Sub-Committee considers should be referred to the Planning Sub-Committee for determination;

(b) paragraph B - Power to amend;

For the avoidance of doubt, the Director is authorised after a Planning sub-committee determination to make any alterations, additions or deletions to the recommended heads of terms and/or recommended conditions (and to authorise any such changes requested by the GLA or government body) (and to further sub-delegate this power) provided this authority shall be exercised after consultation with the Chair (or in their absence the vice-Chair) of the sub-committee.

Purple - Proposed terms of reference

There is a Protocol setting out how members of the Planning Committee will exercise those functions, including behaviour in relation to applicants, residents and other third parties, to ensure the probity of planning transactions and the highest standards expected in public office. This protocol is supplementary to the Members' Code of Conduct at Part 5 of the Constitution.

The Committee has all the functions which are set out below and which are stated not to be the responsibility of the Executive in Regulation 2 and Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and in any statute or subordinate legislation further amending those Regulations (references to paragraphs are to those in Schedule 1):

(a) paragraph A - Town Planning Functions

(A) planning applications for the erection of 10 or more dwellings and where the officer recommendation is for approval;

(B) planning applications for changes of use of 1000 sq. metres or more of gross internal floor space and where the officer recommendation is for approval;

(C) planning applications for the erection, or extension of non-residential buildings where the new build is 1000 sq metres or more of gross internal floor space and where the officer recommendation is for approval;

(D) unless otherwise agreed with the Chair of the Planning Committee, planning applications either:

(i) for major development as defined by the Town and Country Planning (Development) Management Procedure (England) Order 2015 (or any replacement legislation) and where the officer recommendation is for approval; or

(ii) where a legal agreement relating to that development is required; or

(iii) where the recommended decision would be contrary to the development plan;

(E) unless otherwise agreed with the Chair of the Planning Committee, applications submitted by, or on behalf of the Council;

(F) planning applications on Council owned land, where the Council is not the applicant, where significant material planning objections are received during the consultation process and which the Director, in consultation with the Chair of the Planning Committee, determines should be subject to members' consideration;

(G) planning applications submitted by or on behalf of members; or employees within the Planning Service or senior employees elsewhere in the Council; or their spouses, parents or children;

(H) any planning application to amend an application or vary conditions or a legal agreement previously decided/imposed by Planning Committee and which the Director, in consultation with the Chair of the Planning Committee, considers to constitute a major or significant change;

(I) any planning application where there have been objections from a single councillor of the Ward within which the application site is situated and/or a local community body and/or a local residents' association, and a written request setting out the planning reasons for the matter to be referred to the Planning Committee has been made before the expiry of the consultation period, and which the Director in consultation with the Chair of the Planning Committee considers should be referred to the Planning Committee for determination;

(b) paragraph B - Power to amend;

For the avoidance of doubt, the Director is authorised after a Planning committee determination to make any alterations, additions or deletions to the recommended heads of terms and/or recommended conditions (and to authorise any such changes requested by the GLA or government body) (and to further sub-delegate this power) provided this authority shall be exercised after consultation with the Chair (or in their absence the vice-Chair) of the committee.

The Committee shall also:

(i) Make informal recommendations to the Cabinet and full Council on local development documents, development plan documents, ~~the local development framework, the statement of community involvement~~ and any other planning policy matter;

(ii) Review 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;

(iii) 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, and conservation or regulatory issues.

Option 1 – Regulatory Committee terms of reference with proposed changes to change this to main Licensing Committee

The Licensing Committee has functions either (1) as the statutory Licensing Committee of the Council under the Licensing Act 2003, which also exercises functions under the Gambling Act 2005, or (2) as a non-statutory Committee exercising other non-executive functions relating to Licensing, and **other regulatory matters generally**. At the beginning, and at other appropriate stage(s) in each meeting, the Chair will make a short announcement indicating whether the Committee is operating in its capacity as “statutory Licensing Committee” or as a “non-statutory Committee”.

Membership

The Regulatory Committee must have between 10 and 15 members in order to comply with the legislation as statutory Licensing Committee.

Protocol

There is a Protocol outside this Constitution setting out how the Licensing Committee is to operate. The Protocol shall be applied in a manner consistent with Committee Procedure Rules in Part 4 and the relevant Licensing Procedure Rules when the Committee is conducting a formal hearing. Any issue on procedure at the meeting shall be subject to the ruling of the Chair. The Protocol can be amended by the written agreement of the Leaders of the Political Groups on the Council.

(1) In its capacity as the statutory Licensing Committee the Committee has all the functions referred to it by law under the Licensing Act 2003 and the Gambling Act 2005. These include:

(a) To be responsible for monitoring the operation of the Acts licensable activities and gambling in the Borough;

(b) To establish the Licensing Sub-Committees and to agree the delegation of functions to the Sub-Committees and to officers;

(c) 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;

(d) To determine the procedures to be followed in handling applications, notices, representations and all hearings, subject to the relevant Regulations;

(e) Subject to Regulations, to determine the fees payable for applications for premises licences and related matters under the Gambling Act 2005;

(f) 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 (f) above, and shall elect a Chair for the meeting.

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

(a) 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;

(b) 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;

(c) 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;

(e) Reviewing all Council plans and policies on any licensing, or regulatory matters, exercising an overview in relation to common themes and making informal recommendations on these matters to Cabinet and full Council;

(f) 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, conservation or regulatory issues.

Annex 2 - Option 3 Terms of Reference for Strategic Planning Committee

There is a Protocol setting out how members of the Strategic Planning Committee will exercise those functions, including behaviour in relation to applicants, residents and other third parties, to ensure the probity of planning transactions and the highest standards expected in public office. This protocol is supplementary to the Members' Code of Conduct at Part 5 of the Constitution.

The Committee has all the functions which are set out below and which are stated not to be the responsibility of the Executive in Regulation 2 and Schedule 1, Paragraph A (Town and Country Planning) of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and in any statute or subordinate legislation further amending those Regulations.

To establish the Planning Sub-Committees and to agree the delegation of functions to that Sub-Committee;

The Committee shall:

- (i) Make informal recommendations to the Cabinet and full Council on local development documents, development plan documents, ~~the local development framework, the statement of community involvement~~ and any other planning policy matter;
- (ii) Review 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;
- (iii) Make 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, and conservation or regulatory~~ issues.

Licensing Committee Terms of reference would be the same as set out in Annex 1.