

CHESHIRE EAST COUNCIL

REPORT TO: CABINET

Date of Meeting: 20 September 2010
Report of: Borough Solicitor / Strategic Director Places
Subject/Title: Process for consideration and adoption of Local Development Framework (LDF) and amendments to the Constitution

1.0 Report Summary

- 1.1 This report sets out the current arrangement for developing and finally approving the LDF documents, and describes proposed amendments to streamline that process.
- 1.2 The report has been considered by Strategic Planning Board on 14 July, when no comments were raised. The Sustainable Communities and Environment and Prosperity Scrutiny Committees will also consider the documents on 2 and 14 September and the minutes of these meeting will be made available to Cabinet. The decision on the report is to be made by Council on 14 October.

2.0 Decision Requested

- 2.1 That Cabinet notes the current arrangements for approving the LDF and considers the comments made by the Strategic Planning Board, Sustainable Communities and Environment and Prosperity Scrutiny Committees concerning the revised procedures;
- 2.2 That Cabinet recommends that Council approve the revised procedures for approving the LDF documents as set out in Appendix 2;
- 2.3 That Cabinet recommends that Council agrees any necessary authority for the Borough Solicitor to make any necessary and consequential amendments to the Constitution including additions to the terms of reference of Strategic Planning Board.

3.0 Reasons for Recommendations

- 3.1 To streamline the process for approval of the LDF whilst maintaining appropriate opportunities for members to be consulted and to contribute to the LDF preparation and approval process.

4.0 Wards Affected

- 4.1 All.

5.0 Local Ward Members

5.1 All.

6.0 Policy Implications including - Climate change - Health

- 6.1 All documents comprising the LDF are currently part of the Policy Framework, which in accordance with the Constitution must be finally approved by full Council. The alternative arrangements set out in this report seek to streamline the LDF process by removing some of these responsibilities from full Council, whilst still complying with the law.
- 6.2 Potentially, policies and documents included in the LDF may have climate change and/or health implications, although none can be specifically highlighted at this stage.

7.0 Financial Implications 2010/11 and beyond (Authorised by the Borough Treasurer)

7.1 None.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The key pieces of legislation relating to this report are The Planning and Compensation Act 2004, the Town and Country Planning (Local Development) England) Regulations 2004 (SI 2004/2204) and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000/2853) as amended. The implications of this legislation are described in section 11 of this report.
- 8.2 The Council's Constitution makes provision for developing the budget and Policy Framework. Changing the route for approving the LDF documents involves a change to the Policy Framework. A process is set out for doing so. The process involves Cabinet initially drawing up proposals regarding any part of the Policy Framework (which includes the Local Development Framework, or LDF) and consultation on the initial proposals. The relevant Overview or Scrutiny Committees are to be consulted. Clearly in this instance it is also relevant to consult the Strategic Planning Board, given its proposed enhanced role in developing the LDF. Cabinet is then to draw up firm proposals having regard to consultation responses, and to submit these to the Council. The proposed timetable for the process is Cabinet on 19 July, Strategic Planning Board on 14 July, Sustainable Communities Scrutiny Committee on 2 September, Environment & Prosperity Scrutiny Committee on 14 September, Cabinet on 20 September and Council on 14 October.
- 8.3 It should be noted that the acceptance of this streamlined process does not, once implemented, preclude any decision maker from declining to

make a decision and referring the decision up to full Council if this is felt to be appropriate. That option remains open.

- 8.4 In the meantime, some LDF documents can be progressed through the existing process, and a separate report to Cabinet will be presented for this purpose. The future proposed procedure still remains relevant for all types of LDF documents, as it will provide for any future modifications of such documents.

9.0 Risk Management

- 9.1 The legal requirements for approving the LDF documents have been considered in formulating the recommendations in this report. Both the current and the proposed arrangements are considered to be legally compliant.

10.0 Background and Options

- 10.1 The Planning and Compensation Act 2004 provides a statutory duty obliging Local Planning Authorities to prepare and maintain a scheme known as the Local Development Framework (LDF). Following the revocation of Regional Spatial Strategies in July 2010, the Local Development Framework will become the statutory development plan for Cheshire East.
- 10.2 The LDF can be described as a “folder” of documents, comprising Local Development Documents (LDDs) which in turn are made up of Development Plan Documents (DPDs) and other documents. A list of all LDDs, with those which are also DPDs noted, is at Appendix 1. The distinction between the different types of document is important because it governs the decision making process within the Council.
- 10.3 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (“the Functions Regulations”) set out the split of functions between the Executive (that is, Cabinet, or its individual members) and non-Executive (that is, full Council, or any other non-Executive committee to which full Council may choose to delegate such a function – in Cheshire East, this would be Strategic Planning Board). It is worth noting at this point that the term “Executive” in the Functions Regulations is simply an alternative term for “Cabinet”, which is the term which the Council prefers to use as the name for its Executive.
- 10.4 The Functions Regulations provide that DPDs under the Planning and Compensation Act 2004 (i.e. part of the category of LDDs) are not to be dealt with solely by the Executive. Moreover, the actual final adoption of DPDs cannot be done by the Executive. However, the Executive can be involved in the evolution of such documents. It is important to distinguish between the “evolution” stages of the documents, comprising the interim development stage, then the submission stage (where necessary) then finally the adoption/approval stage. It is the publication/submission

stage, and the adoption/approval stage to which the regulations constraining the decision making process apply. More flexibility is available in setting out the steps involved in the earlier stages of the process.

- 10.5 DPDs, according to Regulations made under the 2004 Act, comprise:
- the Core Strategy,
 - Area Action Plans, and
 - any other document including a site allocation policy.
- 10.6 These three documents must be finally approved at non-Executive level, which means full Council, or, should full Council agree, Strategic Planning Board. That does not, however, preclude Executive input, or input from any other appropriate part of the Council, into developing these documents, and having regard to the strategic importance of these documents, it is good practice to provide for this input. Additionally, there may be some documents which do not have to be finally approved by full Council, but which, because of their overarching significance, the Council may choose to include in this category. It is suggested that the Statement of Community Involvement is such a document.
- 10.7 Other LDDs, which are not DPDs, may be finally approved by the Executive (i.e. Cabinet) or, subject to the necessary delegation, the relevant individual Portfolio Holder. The function of dealing with LDF matters has since 1 April 2009 been delegated to the Portfolio Holder for Performance and Capacity.
- 10.8 Based on the reasoning above, the Core Strategy, Area Action Plans, and Site Allocation Policies must be finally approved at non-Executive level. This can be full Council or SPB. In passing, it is worth noting that on 5 May, Strategic Planning Board received two reports outlining the future impact on the Council of the Community Infrastructure Levy (CIL) and the Infrastructure Planning Commission. These issues impact on the Core Strategy. In the circumstances, and having regard generally to its particular strategic importance as part of the LDF it is suggested that the Core Strategy should remain to be finally approved by full Council. Although the Statement of Community Involvement is not a policy document, and not a DPD, its importance as the Council's overall statement of how the community will be involved in the preparation of the LDF suggests that it should also be finally approved by full Council.
- 10.9 Area Action Plans, and documents including Site Allocation policies, as DPDs, must be approved at non-Executive level, although it is suggested that this may be Strategic Planning Board rather than full Council.
- 10.10 Other LDDs which are not DPDs can be finally approved at Cabinet level, although this is not mandatory. SPB's Terms of Reference already include exercising a consultation and advisory role, commenting upon the content of the proposed planning policy and upon the effectiveness

of existing policies employed in development control decisions. It is suggested that SPB should first contribute to the development of these documents, and make final recommendations to Cabinet.

11.0 Overview of Year One and Term One Issues]

- 11.1 The current LDF approval arrangements were inserted into the Council's Constitution which was approved when the Council took up its full functions after its shadow period on the basis that Council approval of all LDF documents was legally compliant, but may be worthy of further consideration once the Council's systems had developed. Now that the Council has been in existence for more than a year, the opportunity can be taken to review and streamline the system.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting:

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Appendix 1 – List of LDDs (with DPDs shown)

- Core Strategy (DPD)
- Site Specific allocations (DPD)
- Area Action Plans e.g. Congleton Town Centre, Middlewich Canal Corridor (DPD)
- Local Development Scheme
- Statement of Community Involvement
- Annual Monitoring Report
- Supplementary Planning Documents (including Village Design Statements, Policy SPDs e.g. Affordable Housing, Planning Contributions)
- Area Supplementary Planning Documents, e.g. Alsager Town Centre

Appendix 2

Type of Document	Portfolio Holder	Cabinet	Strategic Planning Board	Council
The Core Strategy				
Interim Stage		2	1	
Submission Stage		2	1	3
Adoption stage		2	1	3(final)

Type of document	Portfolio Holder	Cabinet	Strategic Planning Board	Council
Site Specific Allocations and Area Action Plans				
Interim Stage		2	1	
Submission Stage		1	2	
Adoption Stage	1		2	3 (final)

Type of document	Portfolio Holder	Cabinet	Strategic Planning Board	Council
Local Development Documents (LDDs) which are not Development Plan Documents (DPDs) *				
Interim Stage	2		1	
(no submission stage)	N/A	N/A	N/A	N/A
Adoption Stage	2 (final) **	2 (final)**	1	

* Including:

- Local Development Scheme,
- Annual Monitoring Report,
- Supplementary Planning Documents (SPDs) - including Village Design Statements, Policy SPDs such as Affordable Housing Contributions, and Area SPDs such as Town Centre SPDs)

** N.B. Final approval of this category of documents may be effected by the Portfolio Holder, provided that the Council's delegations to that Member so allow, or by full Cabinet.

Type of document	Portfolio Holder	Cabinet	Strategic Planning Board	Council
Statement of Community Involvement				
Adoption	2		1	3 (final)