

19 July 2015

**Andrew Fraser
Forward Planning Manager
Wirral Council Regeneration and Planning Service
North Annexe
Wallasey Town Hall
Brighton Street
WALLASEY
Wirral
CH44 8ED**

Dear Andrew

**RESPONSE TO RECOMMENDED REASONS FOR REFUSAL OF THE FORUM'S
NEIGHBOURHOOD AREA DESIGNATION APPLICATION**

I am in receipt of the officers' report to Cabinet within which a recommendation to refuse the Forum's neighbourhood area designation application is contained. An extraordinary general meeting of the Forum will commence at **7:00pm on 3 August 2015** in the **Baden Powell Suite, YMCA, Whetstone Lane**. This will be a single agenda item meeting at which the implications of the decision taken by Cabinet on **27 July 2015** will be discussed and a strategy agreed upon.

This letter sets out the management committee's initial response to the reasons for refusal. Assistance has been sought from **Planning Aid England** and the Government's Neighbourhood Planning Team in the event that the Forum decides to challenge the Council's decision in the High Court.

1) "The area applied for is too large and diverse, including a number of different communities and communities of interest"

RESPONSE: There is no maximum size laid down in the Regulations¹ for a neighbourhood area. The Council's argument appears to be that a lack of social homogeneity across Birkenhead & Tranmere Ward is a reason to deny community rights to people on the basis of where they live within the ward and some other (unidentified) characteristics they may possess. The management committee is concerned that this amounts to unlawful discrimination. At **Clause 2) c)**, the Forum's constitution (attached and publicly available on our [website](#)) seeks to 'foster the goodwill and involvement of the whole community' by recognising and valuing diversity and difference.

¹ The Neighbourhood Planning (General) Regulations 2012 (as amended) [SI 2012 No. 637]

2) ***“The boundary applied for does not properly reflect the boundaries and character of these different communities”***

RESPONSE: Improving social cohesion across Birkenhead & Tranmere is a key aim of the Forum, as **Object 2) c)** and **Object 2) d)** of the Forum’s constitution indicate. The boundaries the Council speaks of are not natural ones. Over a period of several decades the Council and other agencies have socially engineered the population of Birkenhead, moving it around in order to make way for various regeneration initiatives or in order to claim that certain economic targets have been met. It is the Council itself that has created these artificial boundaries, not the people. The Forum wishes to foster a strong sense of community and shared identity across the traditional areas of central Birkenhead and Tranmere. Government guidance states: *“In areas where there is no parish or town council those wishing to produce a neighbourhood plan or Order must put forward a neighbourhood area using their understanding and knowledge of the geography and character of the neighbourhood”*.² It also advises that: *“Electoral ward boundaries can be a useful starting point for discussions on the appropriate size of a neighbourhood area”*.³ This is precisely the approach that has been adopted by the Forum. The management committee considers that anyone who identifies themselves as living or working in Birkenhead & Tranmere should have an opportunity to contribute to the preparation of neighbourhood plan policies. The Council’s proposed neighbourhood area would prevent people who live or work in a significant proportion of the ward from identifying themselves with Birkenhead & Tranmere.

3) ***“The area applied for includes areas of strategic importance to the Borough, which are subject to a far wider community of interest, which is subject to strategic policies in the Council’s emerging Local Plan”***

RESPONSE: Neighbourhood plan policies must be *“in general conformity with the strategic policies contained in the development plan for the area of the authority”*.⁴ There is no requirement for neighbourhood plan policies to slavishly adhere to all relevant strategic policies in the Local Plan and refusing to designate the proposed neighbourhood area (hereinafter “the area”) for this reason would unreasonably prevent policies being brought forward to protect the area and its population from disproportionate harm caused by the siting or other features of strategic development. Having said that, the Forum is not resisting any known strategic development proposal in the area.

4) ***“There are other mechanisms for appropriate public involvement in setting the strategic priorities in these areas”***

RESPONSE: The management committee wishes to point out that there is no up-to-date Local Plan for Wirral yet and no site-specific proposals will be published until after the Local Plan is adopted. The management committee considers that it is entirely appropriate for neighbourhood

² Ref ID: 41-032-20140306

³ Ref ID: 41-033-20140306

⁴ Ref ID: 41-065-20140306

plan policies to adopt a holistic, comprehensive and ambitious approach to planning for its area, whilst recognising that its policies must be *“aligned with the strategic needs and priorities of the wider local area”*.⁵ The Council would be acting contrary to natural justice to routinely deny people the opportunity to exercise their community rights on the basis that other consultation mechanisms exist.

5) “Objections have been received from business interests that are likely to be affected by the designation”

RESPONSE: Membership of the Forum is open to anyone who works in Birkenhead & Tranmere. If they choose not to become members, they would still qualify to vote in the referendum. There is no Regulation that requires “business interests” to be granted a veto over the designation of a neighbourhood area.

6) “Proposals are being prepared for a Business Improvement District, which may be better able to represent the business community within the predominantly commercial part of the area applied for, to the north of Borough Road”

RESPONSE: The application should be decided on its own merits and on the basis of the area proposed for designation as a whole and not its constituent parts. Moreover, the proposal must be determined in accordance with the Regulations as they exist at the time the application is decided. Business Improvement Districts (BID) have not yet been given neighbourhood planning powers and full weight cannot yet be attributed to this as an alternative neighbourhood area proposal.⁶ Furthermore, paragraph 29 of the Government’s recent consultation document indicates that streamlined neighbourhood planning powers might be appropriate for: *“...areas where there are few residents, or residents are not interested in developing a neighbourhood plan”*. Several Forum members (including the Chair and Project Planner) live and/or work within the proposed *Birkenhead BID* [BBID] area. The management committee is of the collective opinion that it would be perverse to refuse a designation application for a neighbourhood area brought forward by residents and workers and then grant streamlined neighbourhood planning powers to a BID in the same area on the basis that local people are not interested in preparing a neighbourhood plan. The management committee is unaware of any lawful impediment to the BBID area and neighbourhood area proposed by the Forum being co-located and is keen to work with BBID towards achieving agreed common goals.

There is a good reason to doubt the Council’s claim that BBID *“...may be better able to represent the business community”*. According to Carl Critchlow of BBID, perhaps as many as **300** of the **650** businesses in the town centre currently benefit from full Business Rates relief.⁷ If this

⁵ Ref ID: 41-001-20140306

⁶ [Review of Business Improvement Districts – consultation](#), Department for Communities and Local Government, March 2015

⁷ At the BBID consultation launch meeting held on 24 March 2015 at The Lauries Centre in Claughton Road

estimate is correct, then **46%** of local businesses would be disqualified from voting upon BBID proposals. However, the people who work in those 300 businesses would qualify to become members of the Forum and could contribute to drafting neighbourhood plan policies that would address the needs of the businesses they work for. There would be significant benefits, therefore, to collaboration between BBID and the Forum. In addition, the Forum would qualify to receive 25% of receipts from Community Infrastructure Levy (CIL) collected within the area.⁸ Thus, the proposal would potentially increase the amount of money available to be spent locally on projects of benefit to everyone who lives and works in the area.

7) “The Business Improvement District should also not be included, because it includes areas of strategic importance, including Birkenhead Town Centre, Hamilton Square and Woodside”

RESPONSE: Excluding these areas would disenfranchise a significant number of local residents, smaller businesses and people who work from home from the neighbourhood planning process. **Clause 5) b)** of the constitution empowers the management committee to: “Promote sustainable development, environmental improvement and the conservation of identified heritage assets through research, education and practical collaboration...”, and **s.61F of the Town & Country Planning Act 1990** includes the ‘promotion and improvement of the environmental well-being of an area’ in the object of a neighbourhood forum. So, it is appropriate to include so-called ‘strategic areas’ within a neighbourhood area regardless of whether any policies come forward for those localities, which in any case would be required to be in general conformity with relevant strategic policies of the Local Plan.

8) “The Mersey Waters Enterprise Zone should not be included, as it is subject to national designation and controls”

RESPONSE: The management committee is content for any part of the Enterprise Zone which falls within the area to be excluded from the area.

9) “Land within the existing planning permission for Wirral Waters should not be included, as it has already been the subject of detailed consideration”

RESPONSE: The management committee is content for any part of the Wirral Waters outline planning permission which falls within the area to be excluded from the area.

10) “Land at the entrance to the Birkenhead Road Tunnel should not be included, because of its strategic importance for the transport network”

RESPONSE: The management committee considers that it would be unreasonable and unnecessary to exclude this land because the Local Planning Authority, which would ultimately be responsible for making the neighbourhood plan, cannot purport control over the highway, as it is

⁸ Assuming that the Council does decide to publish a CIL Schedule following its ongoing economic viability study

controlled by other legislation than that which controls neighbourhood planning. It follows, then, that any neighbourhood plan policy that purports control over the highway would in any case be unlawful.

11) *"The predominantly residential areas to the west of Borough Road should not be included because they are part of communities more associated with Oxton to the west"*

RESPONSE: The management committee considers that it is a matter for the residents of these roads themselves to decide whether or not they identify with Birkenhead & Tranmere. Two inaugural members – one from Normanston Road (CH43 5SB) and one from Marlborough Grove (CH43 5RJ) regretfully had to be deleted because they were unable to provide a qualifying address. These two roads are even further to the west of Borough Road than the roads within Birkenhead & Tranmere Ward. Nevertheless, these people identified themselves not with Oxton but with Birkenhead & Tranmere. It is very unlikely that these two are the only residents to the west of Borough Road who would wish to become members of the Forum and/or have an opportunity to vote in the referendum.

12) *"The industrial areas at Hind Street, to the east of Argyle Street South and to the north of Hinderton Road and Helmingham Grove, should not be included because they are also part of the wider commercial area which is subject to strategic policies in the Council's emerging Local Plan"*

RESPONSE: The management committee considers that the debate about whether the so-called "Mollington Link site" should be allocated for industrial or residential uses is not yet over. This is considered to be a crucial site for the future of Birkenhead & Tranmere, presenting an opportunity to create much better linkages across the town centre, as set out in *The Hamilton Quarter's* (SRB1) exit strategy. It may not be possible to avoid a conflict between the emerging Core Strategy and the Forum's ambitions but excluding this area would prevent any further debate from taking place and would amount to an abuse of power.

13) *"The Council's emerging Core Strategy Local Plan seeks to maintain a clear interface between the residential suburbs and the commercial areas to the north and east"*

RESPONSE: The management committee considers there to be no 'clear interface' between residential suburbs and commercial areas at the neighbourhood level. There are hundreds of people living to the north and east of Borough Road and there are dozens of light industrial and other businesses located within the residential suburbs to the south of Borough Road. There is a need to strengthen the residential character of parts of the area, which might require a small number of businesses to be relocated. However any such proposals (there are none at present) would not be so significant as to prejudice the strategic needs of Wirral. Furthermore, they would need to be consulted upon and be agreed by more than 50% of people voting at a referendum.

Conclusions

No lawful reason has been identified as to why the area should not be designated. There is no valid competing neighbourhood area proposal and the Council must take its decision on the basis of current Regulations.

If there is no appetite or need for policies in certain topic areas (e.g. retail), they simply won't come forward because it would not be possible to obtain the support of more than 50% of those voting in the referendum. This does not amount to sufficient justification, however, for removing the town centre and Hamilton Square from the area.

The Forum sees no lawful reason why the area application should be altered or withdrawn, except in relation to the *Mersey Waters Enterprise Zone* and the *Wirral Waters* outline permission sites.

The Forum will continue to seek a positive and productive dialogue with everyone who lives or works in the area.

Yours sincerely

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

Philip Barton
Chair, Birkenhead & Tranmere Neighbourhood Planning Forum



& Birkenhead
Tranmere
**Neighbourhood
Planning Forum**

CONSTITUTION

Adopted 08 December 2014

Amended 26 January 2015

1) NAME AND STATUTORY STATUS

This document serves to incorporate the "**Birkenhead & Tranmere Neighbourhood Planning Forum**" (hereinafter "the Forum") as a proposed "qualifying body" for the purposes of s.38A (1) of the *Planning & Compulsory Purchase Act (2004)*.

2) OBJECT

In compliance with s.61F of the *Town & Country Planning Act (1990)*, the object of the Forum is **to promote or improve the social, economic and environmental well-being of the Birkenhead & Tranmere area** (hereinafter "the area", as defined in clause 3)). This object shall be pursued by:

- a) Preparing a statutory neighbourhood plan for the area and engaging in other neighbourhood initiatives, including neighbourhood management, in partnership with the Local Planning Authority (hereinafter "the LPA") and any other relevant office of **The Metropolitan Borough of Wirral**;
- b) Engaging with the LPA and all statutory agencies, businesses, voluntary sector groups and community associations with an interest in the area, in order to collaborate for mutual benefit;
- c) Fostering the goodwill and involvement of the whole community through the equal treatment of all, regardless of age, belief, ethnicity, gender, impairment, sexual orientation or any other difference;
- d) Fostering community spirit and encouraging civic pride;
- e) Planning for the provision of decent and adaptable residential, commercial and community buildings and spaces that meet the needs of people who live or work in the area, and
- f) Working towards a more sustainable, prosperous and secure future for the area and its people.

3) NEIGHBOURHOOD PLAN AREA

The area shall be defined as that within the boundary shown on the map at Appendix A.

4) MEMBERSHIP

In compliance with s.61F of the *Town & Country Planning Act (1990)*, the Forum shall be composed of no fewer than 21 individual people and membership shall be open to:

- a) People living within the neighbourhood plan area;
- b) People working within the neighbourhood plan area, and
- c) Ward Councillors for the neighbourhood plan area.

Application for membership shall be made to the Honorary Secretary on the forms provided for this purpose. Members shall comply with the rules of the Forum and abide by its adopted constitution. The Management Committee shall have the power to refuse, suspend or terminate membership in cases where it considers that individual membership would be inconsistent with or detrimental to the pursuit of the Forum's object. Any member or prospective member subject to these measures shall have a right of appeal to the Management Committee and the final decision as to the status of the member or prospective member shall be confirmed by a resolution adopted by a majority of members of the Forum voting at a General Meeting. Any member of the Forum may resign his/her membership by providing the Honorary Secretary with written notice. The Honorary Secretary shall actively maintain a list of members and make it available to the Management Committee upon request. Members will be deemed to have given consent for their name, address and other communication details to be used by the Management Committee to keep them informed of business and social matters relevant to the object of the Forum.

5) MANAGEMENT

The Forum shall be governed by a Management Committee, elected at each Annual General Meeting by members of the Forum, whose responsibilities shall be to:

- a) Pursue the Forum's object, as described in Clause 2);
- b) Promote sustainable development, environmental improvement and the conservation of identified heritage assets through research, education and practical collaboration with the governing structures of bodies referred to at Clause 2 b);
- c) Apply for, invite and receive voluntary financial contributions, charitable funds and public grants in order to further the pursuit of the Forum's object, and to open and administer a bank account to manage such funds;
- d) Publicise and promote the work of the Forum by organising meetings, training, consultation and any other events or initiatives required in pursuit of the Forum's object;
- e) Employ staff and/or volunteers as and when required in pursuit of the Forum's object, and
- f) Take all forms of action that are lawful and necessary in pursuit of the Forum's object, including entering into contracts and other legal agreements.

6) MANAGEMENT COMMITTEE

The Management Committee shall be composed of no fewer than three (3) and no more than twelve (12) members of the Forum. Management Committee members shall be elected for a period of one (1) year, but may stand for re-election at each Annual General Meeting. The Committee shall meet as often as is required but no less frequently than four (4) times per year.

7) OFFICERS

At each Annual General Meeting members of the Forum shall elect the following honorary officers from amongst the Management Committee:

- a) Chair
- b) Treasurer
- c) Secretary
- d) any additional officers needed to effectively pursue the Forum's object.

8) MEETINGS OF THE FORUM

- a) It shall be the responsibility of the Honorary Chair to conduct all meetings. If the Honorary Chair is unable to conduct any meeting s/he shall appoint a deputy, who is also a member of the Management Committee, to do so.
- b) The Honorary Secretary must ensure that a true and accurate record is made of all meetings, such record to be circulated to members of the Forum and made available to any other interested party upon request.
- c) A proposal to amend this Constitution and any other motion or resolution may only be made at a General Meeting and no such amendment, motion or resolution shall take effect unless it be voted upon and confirmed by a majority of those present and entitled to vote.

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- d) A **General Meeting** of all Forum members shall be held at least four (4) times in each twelve (12) month period following the establishment of the Forum (i.e. the date of signing of this document) in order to review and discuss progress made in pursuit of its object.
 - e) The Honorary Secretary shall ensure that all members are given at least fourteen (14) days' notice of the date, venue and start time for each General Meeting.

- f) Wherever possible, the agenda and any supporting papers shall be distributed to all members of the Forum by the Honorary Secretary at least ten (10) days before each General Meeting.
- g) The Management Committee shall ensure that each General Meeting shall also be publicised in the area to non-members.
- h) The defined quorum for a General Meeting shall be six (6) current members, at least two (2) of whom must also be current officers of the management committee. Where the defined quorum has not been reached, a General Meeting may proceed but any vote taken at that meeting shall be invalid.
- i) Each member of the Forum whose name appears on the current membership list shall be entitled to vote at a General Meeting.
- j) Each member of the Forum shall have one vote.
- k) Voting shall be by a show of hands, except in the case of elections when voting shall be by ballot. Issues considered sensitive by the Management Committee may also be voted upon by ballot.
- l) In the case of a tied vote, the Honorary Chair (or appointed deputy) shall have a casting vote.

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- m) An **Annual General Meeting** shall take place no later than three (3) months after the end of each financial year provided that fifteen (15) months must not elapse without an Annual General Meeting having taken place.
 - n) The Honorary Secretary shall ensure that all members are given at least twenty one (21) days' notice of each Annual General Meeting.
 - o) Amendments to the proposed agenda may be submitted in writing to the Honorary Secretary by any member of the Forum up to seven (7) days prior to the date of the Annual General Meeting.
 - p) An **Extraordinary Meeting** may be convened by the Management Committee or on application in writing to the Honorary Secretary, signed by no fewer than five (5) members of the Forum whose names appear on the

current membership list. Each application to convene an Extraordinary Meeting must state the reason for convening the meeting. All of the rules applying to a General Meeting shall apply equally to an Extraordinary Meeting.

9) FINANCE

All monies acquired by the Forum shall be paid into a bank account operated by the Management Committee in the name of **Birkenhead & Tranmere Neighbourhood Planning Forum** (B&TNPF). All funds must be applied solely to the object of the Forum and to no other purpose. All disbursements from the account must be agreed by at least two (2) Management Committee members, authorised to sign as such, one of whom must be either:

- a) Honorary Chair
- b) Honorary Treasurer, or
- c) Honorary Secretary

The Honorary Treasurer shall be accountable for all Forum income and expenditure; shall ensure that funds are utilised effectively, and that the Forum remains solvent. The Honorary Treasurer shall maintain full and accurate accounting records which shall be examined annually by an independent person who is not a member of the Forum. A financial report for the previous accounting year shall be presented at each Annual General Meeting. The Forum's accounting year shall run from 01 April to 31 March.

10) NEIGHBOURHOOD PLANNING

- a) Any decision to undertake, consult upon or submit to the LPA for approval any Neighbourhood Plan shall be subject to a vote of all members of the Forum.

- b) All Neighbourhood Plan consultations shall be open to anyone who lives or works in the area, whether members of the Forum or not.
- c) The Forum shall publicise the Neighbourhood Plan process, seek to involve everyone who lives or works in the area and make an accurate record of the outcome of all consultations.
- d) The Management Committee, on behalf of all members of the Forum, shall be required to work collaboratively on the preparation of the Neighbourhood Plan with the LPA, independent experts or advisors and any other interested party.
- e) At the discretion of the Management Committee, one or more work groups may be delegated the task of preparing the Neighbourhood Plan (or part(s) of it), organise consultation events and undertake any other lawful activity required to further the Forum's object. The remit and membership of any such work group shall be decided by a vote of members of the Forum at a General Meeting. Once duly formed, a work group may co-opt additional members as it sees fit.
- f) If membership of the Forum falls below 21 persons the result of any vote taken in regard to Neighbourhood Planning during this time shall be invalid but business related to other activity referred to in Clause 2a) may continue to be conducted and the result of any vote shall be valid.

11) DISSOLUTION

The Forum may be dissolved by a majority vote of its members at a General Meeting. Any assets and/or remaining monies after debts have been paid shall be returned to their providers or transferred to local charities or bodies with similar objects to those of the Forum at the discretion of the Management Committee.

This constitution was unanimously adopted at the inaugural meeting of the **Birkenhead & Tranmere Neighbourhood Planning Forum** held at St Catherine's Community Centre on 8th December 2014.

Signed: (original signed by Philip Barton, Chair)

Signed: (original signed by Greg Vogiatzis, Secretary)

APPENDIX A

