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# CHESHIRE EAST COUNCIL

## Constitution Committee

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**Date of Meeting:** 27<sup>th</sup> January 2011  
**Report of:** Democratic Services Manager  
**Subject/Title:** Executive Members Serving on the Committees with Responsibility for Planning Functions

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### **1.0 Report Summary**

To invite Members to consider matters arising from executive Members Serving on Committees with responsibility for Planning Functions.

### **2.0 Recommendations**

That the Committee note the information contained in the report.

### **3.0 Financial Implications**

- 3.1 No issues can be identified as arising from the proposals contained in this report.

### **4.0 Legal Implications**

- 4.1 There are no restrictions or rules that prevent Executive Members being appointed to Committees with responsibility for Planning Functions.
- 4.2 Members of a Planning Committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. Avoidance of bias or predetermination is a principle of natural justice which Councillors are expected to embrace by the courts. Failure to do so could result in a challenge to a planning decision.

### **5.0 Risk Management**

- 5.1 Although there are no restrictions on executive Members being appointed to Committees with responsibility for Planning Functions, care needs to be taken in respect of how this is viewed by the public and wider community. Care would also be needed to avoid a conflict of interest for an executive Member where he may be seen as acting as an advocate for a local authority redevelopment scheme.

## **6.0 Background**

- 6.1 At a meeting of the Planning Protocol Sub-Committee held on 6<sup>th</sup> January 2011 the Sub-Committee resolved that a report be submitted to the Constitution Committee on executive Members being appointed to Committees with responsibility for Planning Functions.
- 6.2 Under the 1972 Local Government Act the Council has powers to appoint Committees to discharge its functions.
- 6.3 The Local Government Act 2000 amended the Councils powers under this Act through the introduction of executive arrangements.
- 6.4 The Local Government Act 2000 did include two specific requirements in relation to the role of executive Members. First, they could not be a Member of an Overview and Scrutiny Committee. Secondly only one executive Member can sit on the Standards Committee and it cannot be the Leader of the Council. There is therefore no legal obstacle to executive Members being appointed to Committees with responsibility for Planning Functions. This is a common practice amongst many local authorities. At Cheshire East Executive Members are appointed to Committees with responsibility for Planning Functions.
- 6.5 The new executive arrangements under the Local Government Act 2000 created an interesting situation for Cabinet members who are also members of planning committees. Any Cabinet Member who is on the authority's planning committee might on occasions be precluded from participation with planning committee proceedings due to personal and/or prejudicial interests, or as a consequence of perceived pre-determination.
- 6.5 The issues in question are not clear cut, and will depend on the circumstances of a particular case. However, the general advice is that a member could, in such circumstances, be so committed to a particular development as the result of their cabinet responsibility that they may not be able to participate properly in determining the application in question. A judgement would need to be made in each case, based upon the circumstances. Legal advice may need to be taken.

## **7.0 Access to Information**

- 71 The background papers relating to this report can be inspected by contacting the report writer:

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