

Cheshire East Council

Audit and Governance Committee

Date of Meeting: 18 February 2016

Report of: Director of Legal Services

Subject/Title: Dispensations under Section 33 of the Localism Act 2011

1. Report Summary

- 1.1. This report invites the Committee to consider granting dispensations under Section 33 of the Localism Act 2011, in response to any request made by a Member or Members in respect of the forthcoming meetings of the Strategic Planning Board, the Cabinet and Council which will consider the Local Plan.
- 1.2. This report also invites the Committee to clarify an apparent inconsistency in the Constitution and determines whether it wishes the Director of Legal Services to have delegated authority to grant dispensations in future and, if so, under what circumstances.

2. Recommendation

- 2.1. The Committee determine any written requests for dispensations submitted by Members in respect of the forthcoming meetings of the Strategic Planning Board, the Cabinet and Council concerning the Local Plan
- 2.2. The Committee clarifies an apparent inconsistency in the Constitution and determines whether the Director of Legal Services (and, if the Director is absent or conflicted, the Deputy Monitoring Officer) be given delegated authority to determine applications for dispensations under Section 33 of the Localism Act 2011 and, if so, under which sub-paragraphs of Section 33(2).

3. Reasons for Recommendation

- 3.1. In order to enable Members, who would be prevented from taking part in the consideration of, and voting upon reports, in respect of the Local Plan, to do so.

4. Background

- 4.1. Section 31(4) of the Localism Act 2011 ('the Act') prevents Members from taking part in the consideration of, and voting upon, reports in respect of which they have a disclosable pecuniary interest.

- 4.2. However, Section 33 of the Act enables local authorities to grant dispensations, thereby allowing Members with disclosable pecuniary interests to take part in the consideration of such a matter and in appropriate cases also allowing such Members to vote on that matter.
- 4.3. Section 33 of the Act sets out the circumstances in which local authorities are permitted to grant dispensations as follows:
- (2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—
- (a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
 - (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
 - (c) considers that granting the dispensation is in the interests of persons living in the authority's area,
 - (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or
 - (e) considers that it is otherwise appropriate to grant a dispensation.
- 4.4. Given that the report on the Local Plan will be considered by the Strategic Planning Board on 18 February 2016; the Cabinet on 23 February 2016; and by Full Council on 25/ 26 February 2016, it is possible that there may be a number of Members with disclosable pecuniary interests in the matter.
- 4.5. Although it is unlikely that a significant number of Members might be unable to take part in the meetings in question, some Members may have a disclosable pecuniary interest as a result of being appointed by the Council to an outside body. In such circumstances the Committee is invited to consider whether dispensations should be granted under Section 33(2)(c) and/or 33(2)(e) of the Act.
- 4.6. This matter is referred to the Committee as under Part 3 of the Constitution (Responsibilities for Functions) one of the functions of the Audit and Governance Committee is to ***'grant dispensations under the provisions of the Localism Act 2011 to enable a member or co-opted Member to participate in a meeting of the Authority.'***
- 4.7. However, in Part 3 of the Constitution, in the section headed 'Statutory and Proper Officer Provisions,' the Director of Legal Services is authorised regarding the ***'Determination of written requests from members for dispensations where they have a pecuniary interest.'*** The 'Legal Team

Manager' is named as the substitute. There are currently three Legal Team Managers, although only one of them is designated as Deputy Monitoring Officer.

- 4.8. Officers have been unable to find any decision by the Committee to delegate the granting of dispensations to the Director of Legal Services. In the circumstances, the Committee is invited to clarify whether it wishes the Director of Legal Services to determine applications for dispensations under Section 33 of the Localism Act 2011 and, if so, under which subparagraphs of Section 33(2). If the Committee is minded to so authorise the Director, it is recommended that the delegation is extended to the Deputy Monitoring Officer to cover the absence or conflicting of the Director.

5. Wards Affected and Local Ward Members

- 5.1. All wards could be affected.

6. Implications of Recommendation

6.1. Policy Implications

The Local Plan is a major council policy, and it is important to secure wide Member involvement in the approval of the document.

6.2. Legal Implications

The Legal implications are set out in the body of this report.

6.3. Financial Implications

There would appear to be no financial implications.

6.4. Human Resources Implications

There are no human resources implications.

6.5. Equality Implications

The proposals contained in this report seek to ensure that the Council's equality policies are observed, and that widespread Member involvement in the approval of the Local Plan is secured.

6.6. Rural Community Implications

Securing widespread Member involvement in the decision-making in respect of the Local Plan will ensure that the interests of rural communities are protected.

6.7. Public Health Implications

There would appear to be no public health implications.

7. Risk Management

By ensuring that the provisions of the Localism Act 2011 are observed, any risks around failure to observe the Member Code of Conduct in respect of pecuniary interests will be removed.

8. Background Papers

The Localism Act 2011

9. Contact Information

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