

CHESHIRE EAST COUNCIL

REPORT TO: Standards Committee

Date of Meeting:	27 th September 2010
Joint Report of:	Monitoring Officer and Head of Planning and Policy
Subject/Title:	The Planning Protocol

1.0 Report Summary

- 1.1 This report attaches as Appendix 1 proposed amendments to the Planning Protocol adopted by Council on 24th February 2009. The Standards Committee is asked to review and comment on the proposed amendments.

2.0 Recommendations

- 2.1 To commend the amended Planning Protocol contained in the joint report of the Monitoring Officer and Head of Planning and Policy to the Constitution Committee for inclusion in the Constitution.

3.0 Reasons for Recommendations

- 3.1 Since the adoption of the original version of the Planning Protocol by the Council, updated versions of guidance for Planning Councillors have been published, and additionally the Planning Protocol has been reviewed by the Chairmen and Vice Chairmen of the Strategic Planning Board and Planning Committees, in conjunction with Officers.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All Strategic Planning Board and Planning Committee Members

6.0 Policy Implications

- 6.1 None

7.0 Financial Implications for Transition Costs

- 7.1 None

8.0 Legal Implications

- 8.1 There is a risk of legal challenge to the decisions made by the Strategic Planning Board and Planning Committee's if robust and consistent procedures are not in place in line with current national guidance.
- 8.2 There is also a greater risk of a Local Government Ombudsman complaint being upheld if the Authority does not provide clear, consistent and up-to-date advice to Councillors in carrying out their duties and responsibilities when determining Planning Applications and considering planning matters.

9.0 Risk Management

- 9.1 The Planning Protocol, in order to operate effectively, needs to be a document that is reviewed and updated regularly, and those amendments reported to the members of the relevant Committees so that members involved in the planning process are fully aware of the contents and their responsibilities.
- 9.2 If the reviews and updates do not take place, and members are not made aware of them, a number of risks can be identified:
- Generally, a lack of up-to-date advice aimed at ensuring the integrity of the planning system for those Councillors involved as Members of the Board or Committees and for those involved as Local Ward Members
 - Personal and prejudicial interests and fettering of discretion not being identified and declared at the required times and the appropriate actions carried out as a result
 - lack of, or inconsistent, up-to-date advice concerning how Councillors respond to requests for any meetings with developers, applicants, neighbours, Parish/Town Councils
 - lack of, or inconsistent, advice regarding lobbying of and by Councillors and how to react to this
 - lack of clarity and inconsistent procedures applied throughout Cheshire East with regard to decision making at Board/Committee meetings
 - Complaints to the Local Government Ombudsman being upheld over conduct and matters that occur at Board/Committee meetings and during the conduct of planning applications.

- 9.3 The updated protocol provides updated guidance and requirements on these points.

10.0 Background and Options

- 10.1 A Planning Protocol was adopted as part of the Constitution by the Council in February 2009, and was expected to be reviewed by both Officers and Members in light of any new Guidance that had been published and the operation of the Planning Protocol following the first few months of the Strategic Planning Board and Planning Committees taking decisions as the Local Planning Authority for Cheshire East.
- 10.2 In August 2009 a meeting between the Chairmen and Vice Chairmen of the Strategic Planning Board and Planning Committees and relevant Planning Officers took place, to review a number of issues arising out of the first three months of the operation of the Development Management Service for Cheshire East. This included the operation of the Planning Protocol and any queries or issues that arose that needed amendments or clarification within the protocol.
- 10.3 At this meeting it was acknowledged that an updated version of the Local Government Association guidance document, "Probity in Planning", had been published, and while not necessitating whole scale changes to the Planning Protocol, there was some further clarification that could be incorporated within the Planning Protocol for Cheshire East. Additionally, there were a number of amendments/clarifications that Officers had identified for the Planning Protocol through the operation of such for the initial months of Cheshire East.
- 10.4 An amended Planning Protocol has now been produced and is attached as Appendix 1 to this report. The changes made have been tracked through the document to make them easy to locate and identify what the changes are.
- 10.5 The amended Planning Protocol was considered by the Strategic Planning Board at their meeting on the 25th September 2010, and they resolved that the amended Planning Protocol be commended to the Constitution Committee for inclusion in the Constitution subject to minor amendments to paragraph 8.4 and 4.5, and any views that are expressed by the Standards Committee. The amendments required have been incorporated into the document at Appendix 1 of this report and are identified in blue typeface.
- 10.6 Aside from the Strategic Planning Board amendments, the main changes are to sections 4, Fettering Discretion in the Planning Process and 7, Contact with Applicants, Developers and Objectors, with other changes picking up basic typographical errors or making minor amendments and clarifications to existing wording.

- 10.7 The changes to section 4 are an attempt to clarify the position of Members in avoiding fettering of discretion and when a Member has fettered their discretion. This is a result of updated guidance in the Probity in Planning document and as a result of specific issues that have arisen for Cheshire East. Members may be aware that the Coalition Government have indicated that they may look at the issue of pre-determination/fettering of discretion, and guidance may therefore change again in the future.
- 10.8 The newly added section 4.5 reminds Members that they can refer members of the public to other Councillors within the same Ward, particularly if they are not on the Strategic Planning Board or the same Committee. Even if they are, it may be that Members determine that one of the ward members should be the voice of the Local Community and effectively fetter their discretion, but that this would leave the other Member/s free to take part in the decision making process at the relevant Committee.
- 10.9 Section 4.7 is additional guidance as to what a member who has fettered their discretion (pre-determined the item) should then do at the meeting, again following the updated Probity in Planning document and experiences of the three Committees. Clarification is provided that a pre-determining Member should not simply push their chair back from the Committee table, they should as a minimum move to the public gallery to be clear that they are no longer part of the decision making body. Should the Member wish to speak under the Public Speaking Protocol, they should do so from the public gallery, and return there after speaking until the item has been concluded when they can rejoin the Committee. However, Members should be alive to circumstances where they should do more to distance themselves from the decision making (eg by leaving the room at an appropriate point).
- 10.10 The addition to Section 7 regarding Pre Application Discussions is provided as high level general advice as it is understood that the Development Management Officers are to provide a further, more detailed, guidance document, akin to that already produced on Site Visits and Call in of applications. Again this follows additional guidance produced in the Probity in planning Document and the up dated Positive Engagement – a Guide for Planning Councillors (updated version) which is produced by a number of bodies including the Planning Advisory Service, Local Government Association, Planning Officers Society, Association of Council Solicitors and Secretaries and the Standards Board for England. The Government is committed to more pre-application discussion with developers as part of the Development Management process and as a result there is a need to provide advice to Members on their role in the process.

11.0 Access to Information

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

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