

# CHESHIRE EAST COUNCIL

## Constitution Committee

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**Date of Meeting:** 30<sup>th</sup> September 2010  
**Report of:** Monitoring Officer and Head of Planning and Policy  
**Subject/Title:** The Planning Protocol

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### **1.0 Report Summary**

- 1.1 This report presents, as an Appendix, proposed amendments to the Planning Protocol adopted by the Council on 24<sup>th</sup> February 2009. The Constitution Committee is asked to review the proposed amendments and, if content to do so, recommend them to Council.

### **2.0 Recommendations**

- 2.1 That, subject to any comments by the Standards Committee, Council be recommended to approve the proposed amendments to the Planning Protocol as set out in the Appendix for incorporation into 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. In addition, 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 wards would be affected by the proposed change.

### **5.0 Local Ward Members**

- 5.1 All local ward members would be affected by the proposed change.

### **6.0 Policy Implications**

- 6.1 There are no direct policy implications arising from the proposals contained in this report.

### **7.0 Financial Implications**

- 7.1 None can be identified.

## **8.0 Legal Implications (authorised by the Borough Solicitor)**

- 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 on 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 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. This was expected to be reviewed by Officers and Members in light of any new Guidance that had been published. Changes were also expected to arise as a consequence of the operation of the Planning Protocol following the early work of the Strategic Planning Board and Planning Committees.
- 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.
- 10.3 At that meeting it was noted that an updated version of the Local Government Association guidance document, "Probity in Planning", had been published. Whilst not necessitating whole scale changes to the Planning Protocol, some further clarification 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 an Appendix to this report. The changes made have been tracked through the document to make them easy to locate and identify.
- 10.5 The amended Planning Protocol was considered by the Strategic Planning Board at its meeting on 25<sup>th</sup> September 2010. The Board 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 to any views that are expressed by the Standards Committee. The amendments recommended by the Strategic Planning Board have been incorporated into the document at the Appendix to this report and are identified in blue typeface.
- 10.6 The Standards Committee will be considering the amended Planning Protocol at its meeting on 27<sup>th</sup> September 2010, and any further amendments proposed will be reported to this Committee at the meeting.
- 10.7 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 wordings.
- 10.8 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 has indicated that it may look at the issue of pre-determination/fettering of discretion, and guidance may therefore change again in the future. For the time being, however, the Protocol should be changed to reflect the present position.

- 10.9 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.
- 10.10 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).
- 10.11 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 updated 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.
- 10.12 The Vice-Chairman of the Constitution Committee has submitted a separate request that the Committee review the Planning Protocol at this meeting.

#### **11.0 Access to Information**

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

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