

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	2 nd September 2014
Report of:	Head of Governance and Democratic Services
Subject:	Notice of Motion - Emergency Powers
Portfolio Holder:	Councillor J P Findlow-Governance Portfolio

1.0 Report Summary

- 1.1 On 17th July 2014 Council resolved to refer a Notice of Motion, relating to Emergency Powers, to Cabinet for decision. This report provides details of the Motion and makes recommendations upon how Cabinet should respond.

2.0 Recommendations

- 2.1 That no further action be taken in response to the Notice of Motion.

3.0 Reasons for Recommendations

- 3.1 The Officer Scheme of Delegation has, very recently, been approved by Council and the Council's general arrangements are sufficient to ensure that these powers are properly exercised..

4.0 Wards Affected

- 4.1 All wards.

5.0 Local Ward Members

- 5.1 The subject matter of the Notice of Motion could potentially affect all local Ward Members.

6.0 Policy Implications

- 6.1 The Council's approach to the use by officers of delegated powers, as set out in the Constitution, could potentially be affected by any decision made in response to the Notice of Motion.

7.0 Implications for Rural Communities

- 7.1 The matters referred to in this report could have implications for the Council's rural communities.

8.0 Financial Implications

- 8.1 No direct financial implications would appear to arise in connection with the Notice of Motion.

9.0 Legal Implications

- 9.1 Any changes to the powers of officers under the Scheme of Officer Delegation would necessitate a recommendation of the Constitution Committee and a resolution of Council.

10.0 Risk Management

- 10.1 Removal or reduction of the powers delegated to officers to take urgent action would create risk for the Council in that it may be necessary to convene a meeting of the appropriate decision-making body before such action could be taken. Delays associated with this would present a risk to the Council.

11.0 Background and Options

- 11.1 On 17th July 2014, Council resolved to refer a Notice of Motion to Cabinet for determination.

- 11.2 The wording of the Motion was as follows:

“That the Constitution Committee carefully define ‘emergency’ so that emergency powers are used only in a real emergency.”

The Motion was proposed by Councillor Arthur Moran and seconded by Councillor David Brickhill.

- 11.3 Councillor Moran was asked to clarify the reasoning behind the motion and responded as follows:

“My Group are concerned that officers are using emergency powers when there is no emergency, they used it recently to withdraw the sole reason for refusal of a large housing estate application.

This contradicted a decision made by the Planning Committee. They did have time to discuss this with the Committee but they did not take this opportunity and made the decision.

We believe it was wrongly used to purchase the Royal Mail depot in Crewe.

The objective is to ensure that decisions which have been made by Members are not reversed without their consent, also to stop decisions being made by officers that should of been made by Council or the appropriate Committee.

Therefore we would request that the motion is referred to the Constitution Committee”.

- 11.4 Whilst the Notice of Motion refers to the use by officers of “emergency powers”, there are very few uses of this term in the officer scheme of delegation eg the taking of “emergency action” in respect of dangerous buildings. However, there are many powers which are delegated to officers and which apply to circumstances of “urgency” eg dealing with enforcement work and demolitions. It would therefore appear to be the case that the use of the term “urgency” can be regarded as applicable to the Notice of Motion.
- 11.5 At its meeting on 14th May, Council agreed the current officer scheme of delegation. Council has therefore very recently agreed the powers which it wishes to be exercised by officers, having received an appropriate recommendation from the Constitution Committee.
- 11.6 The reasons submitted in support of the Notice of Motion, by its proposer, state that “the objective is to ensure that decisions which have been made by Members are not reversed without their consent, also to stop decisions being made by officers that should (have) been made by Council or the appropriate Committee”. Clearly, officers must only be permitted to exercise powers which are delegated to them by Council, through the Constitution, and in accordance with the Constitution. However officers are empowered to take urgent action without the need to seek authority from a committee or other decision-making body in order to ensure that, in circumstances of urgency, there are no delays in such action being taken.
- 11.7 The wording of the formal Notice of Motion implies that the powers delegated to officers should be revisited in order to ensure that (urgency) powers are correctly used. It is clearly of key significance to ensure that all Council decision-making arrangements properly adhere to the limits set out in the Constitution, as approved by Council. However, this is the role of the Council’s statutory officers, and of the Constitution and Audit and Governance Committees.
Council has, very recently, approved the most recent version of the Officer Delegation Scheme, which sets the limits of powers delegated to Council officers, and other Council arrangements are sufficient to ensure that these powers are properly exercised.
- 11.8 This report therefore recommends that no further action is taken in response to the Notice of Motion.

12.0 Access to Information

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

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