

Meeting: STANDARDS

Agenda Item: 4

Portfolio Area: RESOURCES

Date: 16 JANUARY 2013

DISCLOSABLE PECUNIARY INTERESTS - DISPENSATIONS

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1. PURPOSE

- 1.1 To consider requests for dispensations under Section 33 Localism Act 2011

2. RECOMMENDATIONS

- 2.1 That dispensations for a period of 4 years be granted to all Members from the restrictions set out in Section 31 (4) (a) and (b) of the Localism Act 2011 (the Act) for the purposes of all meetings and business relating to budgeting, council tax setting and rent setting in the circumstances set out in sections 4 (2) (3) and (5) below, where their disability arises either from a DPI in a beneficial interest in land or a contract with the Council as a result of their membership of a non profit making voluntary or community body.
- 2.2 That the Borough Solicitor be authorised to consider and grant dispensations in similar circumstances to any member who may make an application for a dispensation in the future

3. BACKGROUND

- 3.1. All Councillors have completed their Registers of Interests as required by the Act and as such councillors have declared Disclosable Pecuniary Interests (DPIs). If a member has a DPI in a matter that is being considered at a meeting, they are required, by the Localism Act to leave the room and not participate in the debate or vote on the item
- 3.2 Under the old standards regime, the legislation provided a number of exemptions which allowed members who had prejudicial interests to take part in related business. One particular exemption permitted members who are also council tenants to take part in housing decisions and another was a blanket permission for members to vote on the setting of budgets and precepts.
- 3.3 These exemptions have been repealed and, although there is some uncertainty over the correct legal interpretation, a commonly held view is that the Act, in effect, prohibits members who have a relevant DPI from taking part in these debates. The relevant DPI in both these cases will be the disclosure of land owned or rented from the Council in the Authority's area. As almost all Members own or rent a home in

Stevenage Members who wish to take part in these decisions will either have to face the risk of legal challenge and potential prosecution or obtain a dispensation from this Committee.

3.4 The provisions on dispensations have been significantly changed by the Act. The Act will allow the Council to grant dispensation in the following circumstances for a specified period of time not exceeding 4 years:

- (a) That so many members of the decision-making body have DPIs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
- (b) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.;
- (c) That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
- (d) That the authority considers that it is otherwise appropriate to grant a dispensation.

3.5 At its meeting of 18th July 2012 the Council delegated authority to grant dispensations to the Standards Committee.

3.6 Under the Act the grant of a dispensation may only be made following a written request by a Member to the proper officer (the Borough Solicitor)

3.7 Dispensations can be granted for up to 4 years.

4. REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS

4.1 The Chief Executive and the Borough Solicitor have written to all Members reminding them of the provisions of the Act set out above and the possible implications of their participation in the Council’s budgeting processes if they do not obtain a dispensation. The officers identified the DPIs where Members will find themselves under a disability as interests in property and council tenancies.

4.2 Land

This DPI covers any property in the Council’s area in which a member has a beneficial interest and therefore includes Members’ or their spouses’ or partners’ homes. On the face of it property interests are directly affected by the level of Council Tax. As almost all Members have registered such an interest it is clear that paragraph 33 (2) (a) of the Act (set out above in paragraph 3.4) applies

4.3 Tenancies

The previous standards regime permitted Members who were council tenants to attend meetings and vote on housing matters including rent setting. This item of business has similar characteristics to the setting of Council tax – it is a central function of the Council and affects many of the town's residents

4.4 Membership of Unincorporated Associations

Officers have also identified a third area of concern where Members might be under a disability in the budget process as a result of their involvement in voluntary and community bodies. The statutory list of DPIs does not include, as such, membership or involvement with such organisations. Although Members are required to register their interests where they have a beneficial interest in an outside body and/or may make a profit from the body concerned, most if not all, the outside bodies supported by the Council are non profit making and, probably, the legislation was not intended to catch membership of voluntary community organisations.

- 4.5 Members are, however, required to register/declare contracts between themselves and the Council. The grant conditions imposed by the Council on the organisations it funds are, arguably, contracts as they require the performance of certain services as a condition of the grant. Most of these organisations are unincorporated and so their legal identity is nothing more than the individuals who make up the organisation. Where the grant conditions are signed by a Council member for the organisation he or she may be deemed to have a DPI in the business of determining the grant to that body. It is less clear that a member who is on the management committee of an organisation would have a relevant DPI.
- 4.6 The Council is required by law to set a budget, it is therefore important to ensure that meetings are quorate, so as to ensure a decision can be taken. Failure to set a budget would have serious implications for the Council.
- 4.7 Due to the number of councillors who have disclosed a relevant DPI on their register; there is a real risk that without a dispensation the Council meeting item dealing with the budget and setting the council tax would be inquorate.
- 4.8 Furthermore It is considered inappropriate that any member should be prevented from participating in the budget process being one of if not the most important function of the Council either because they have an interest which is shared in common with many thousands of residents or, in the case of membership of voluntary or community organisations, where they have a community role which is not pursued for profit or gain. For similar reasons it considered inappropriate for any Members to be excluded from participating and voting in rent setting for council housing or other strategic housing policies.
- 4.9 At the time of publishing this report 22 members have responding by requesting dispensations and it is proposed that the Borough Solicitor should be given the delegated power to grant dispensations in similar cases to those members who have not yet made a request but do so in future

5. IMPLICATIONS

None

BACKGROUND DOCUMENTS

- Letter to Members dated 26 November 2012
- Code of Conduct for Members of Stevenage Borough Council dated July 2012

APPENDICES

None