

# Southend-on-Sea Borough Council

Department of the Chief Executive & Town Clerk

Robert Tinlin Chief Executive & Town Clerk  
David Andrews Borough Treasurer & Deputy Chief Executive  
John Williams Deputy Town Clerk & Monitoring Officer

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Contact name: John Williams E-mail: johnwilliams@southend.gov.uk  
Date: 22<sup>nd</sup> September 2006

All Councillors

Dear Councillor

**Re: Proposals for a new stadium for Southend United Football Club  
(with enabling development) at Fossetts Farm and  
the redevelopment of the existing ground at Roots Hall**

1. **Presentation to Members**

As you are no doubt aware, planning applications in respect of the above proposals are likely to be submitted to the Council very shortly.

In advance of the submission of the applications, Ron Martin, the Chairman of the Club, will be making a presentation to all Members about the proposals.

This presentation will be held at 7:00 pm on Thursday 28<sup>th</sup> September 2006 in Committee Room 1 and all Members are invited.

2. **Avoiding Pre-determination – The Common Law Rule against Bias**

If Members wish to participate in the decision making process in respect of these applications, then they must not make statements (either at the Presentation or elsewhere) which indicate that they find the proposals acceptable or unacceptable. A recent High Court decision (R on the application of Condrón v National Assembly for Wales 2005) shows that a strict line is being taken against bias being shown in the planning process. Even statements of pre-disposition can amount to prejudgement and so prevent a Member participating in the determination of a planning application.

### 3. **Personal & Prejudicial Interests and the Members Code of Conduct**

3.1 The proposals clearly benefit the Club and it is likely that a number of Members will have a personal or prejudicial interest in them by virtue of:

- being a season ticket holder
- attending Southend matches and / or
- being a member of the Supporters Club

3.2 If a Member has a personal interest and “attends a meeting of the authority” at which the proposals are considered, then he must disclose the interest to the meeting and the nature of that interest.

This requirement relates to a formal meeting of the authority and does not apply to an informal presentation to Members. Accordingly, all Members can attend the presentation by Ron Martin referred to in 1, if they so wish.

3.3 If a Member has a prejudicial interest then he or she must:

- withdraw from the room when the proposals are considered; and
- not seek improperly to influence a decision about the matter (i.e. no lobbying of officers or other Members)

The test of a “prejudicial interest” is whether a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice the Member’s judgement of the public interest.

3.4 Having discussed this matter with the Standards Board for England, I would offer the following advice on personal and prejudicial interests:

- (i) A Member who is a season ticket holder will have a prejudicial interest in the proposals.

A decision of the Court of Appeal in 2001 (R v Local Commission for Administration exp. Liverpool City Council) endorsed the principle that season ticket holders had a clear and substantial interest in a planning application relating to the development of Anfield Stadium. Although this decision was made in the context of a previous Code of Conduct, it would seem to be equally applicable to the new Code.

- (ii) A Member who attends Southend United matches and/or who is a member of the Supporters Club, may have a personal or prejudicial interest.

Clearly the more matches which the Member attends, the greater the likelihood that he will have a personal or prejudicial interest. Furthermore, if attendance is coupled with membership of the Supporters Club, then this increases the likelihood that a Member will have an interest.

In the Liverpool City Council case referred to in (i), the Court of Appeal decided that “regular attenders” at Anfield had a clear and substantial interest in the planning application, in the same way as season ticket holders. This was on the basis that a regular attender had no lesser commitment or loyalty to the Club than a season ticket holder.

Unfortunately the Court of Appeal did not define a “regular attender” and I am unable to give definitive guidance on how many matches a Member must attend to give rise to a personal or prejudicial interest.

I see the position as a sliding scale, rather than a series of steps, but would suggest that:

- Attendance at less than 5 matches, in the 12 month period prior to meeting, is unlikely to give rise to a personal interest.
- Attendance at 5 or more games, in the 12 month period prior to the meeting, is likely to give rise to a personal interest, particularly if coupled with membership of the Supporters Club.
- As the number of attendances in the 12 month period prior to the meeting increases, so does the likelihood that the Member will have a prejudicial interest. Once the figure of 10 is reached, I think it likely that the prejudicial threshold will have been reached.

However in the end, Members need to consider their own position and if in doubt to err on the side of caution.

- (iii) A Member may also have a personal or prejudicial interest for other reasons: For example if the Member lives near either of the sites, or is a personal friend of a Club official, or works for the Club. This letter does not deal with such individual circumstances, but I will be pleased to advise any Member who has a particular problem.

4. **Dispensations under the Code of Conduct**

Paragraph 12.1 of the Code of Conduct does contain a provision for obtaining a dispensation from the Council's Standards Committee, to participate despite having a prejudicial interest.

Under Regulation 3 of the Relevant Authorities (Standards Committee) Dispensation Regulations 2002 a dispensation may be granted when at least 50% of those entitled to participate are prevented from doing so by a prejudicial interest.

Whether or not this circumstance applies depends on how many Members are likely to be conflicted out. Accordingly can you please complete the form **attached** and return it to me as soon as possible, so I can establish the situation.

In any event I need to point out that the Standards Committee will not grant dispensations as a matter of course – and may be reluctant to do so in connection with planning applications.

I am sorry this is rather complicated, but we need to ensure there is integrity in the planning process – and I do not want to see any Members falling foul of the rules and a complaint being made about them to the Standards Board for England.

Yours sincerely

J K Williams  
Deputy Town Clerk and Monitoring Officer

**PROPOSALS FOR A NEW STADIUM FOR SOUTHEND UNITED FOOTBALL CLUB (WITH ENABLING DEVELOPMENT) AT FOSSETTS FARM AND THE REDEVELOPMENT OF ROOTS HALL**

**NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

PLEASE TICK ONE OF THE THREE OPTIONS:

I am a Season Ticket Holder or Regular Attender of Southend United FC and so consider that I have a prejudicial interest in the proposals

OR

I believe I have a prejudicial interest in the proposals for other reasons (see para 3.4 (iii))

OR

I do not consider that I have a prejudicial interest in the proposals

Signed: \_\_\_\_\_

Please return this form to John Williams, Deputy Town Clerk & Monitoring Officer at the Civic Centre by 30<sup>th</sup> September 2006.