

# Southend-on-Sea Borough Council

Agenda  
Item No.

Report of the Chief Executive

to

**Standards Committee**

on

**21<sup>st</sup> November 2017**

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Principal Democratic Services Officer

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## **Requests for Dispensations**

### ***A Part 1 Public Agenda Item***

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#### **1. Purpose of Report**

For the Standards Committee to consider and determine applications for dispensations under S.30 Localism Act 2011 submitted by eight Councillors.

#### **2. Recommendations**

**That the Standards Committee determines:**

- **Whether the dispensations are required;**
- **Whether to grant the dispensations and the terms of the dispensations;**
- **Whether the dispensations should extend to voting as well as participation in debate; and**
- **The length of time the dispensations should operate for.**

#### **3. Background**

- 3.1 The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced “Disclosable Pecuniary Interests” (“DPI”) and new rules on the grant of dispensations to allow Councillors to take part in or vote on matters in which they have a DPI.
- 3.2 At its meeting on the 19<sup>th</sup> July 2012, the Council agreed the new standards regime for Councillors and co-opted members pursuant to the provisions of the Localism Act 2011 (**Appendix 1**).

The new regime included:

- A new Members’ Code of Conduct (“The Code”) which is attached at **Appendix 2**;

- Some standard dispensations applicable to all Councillors so they can debate and vote on matters where many Members are likely to have a DPI, such as setting the Council Tax and approving the Members' Allowances Scheme - see **Appendix 1** and Footnote 2 to paragraph 10.1 of the Code.
- An arrangement for a Councillor to apply to the Standards Committee to be granted an individual dispensation to debate and / or vote on a matter when he/she has a DPI. (The ability for Councillors to apply to the Standards Committee for individual dispensations existed under the old standards regime, but no requests were ever made).

### 3.3 The Code sets out rules relating to the registration and declaration of interests.

In summary these provisions are as follows:

- (a) Disclosable Pecuniary Interests (DPI's) as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and section 6 of the Code:
- Councillor must register all such interests of himself and spouse / partner.
  - Councillor must disclose all such interests of himself and spouse / partner if it relates to business to be considered at any Council meeting.
  - After having declared a DPI a Councillor must not participate in the matter and must withdraw – unless a dispensation is granted by the Standards Committee under S.33 of the Localism Act 2011 - see section 10.1(a) of the Code.
- (b) Other Pecuniary Interests as defined in section 7 of the Code  
The same rules apply as with DPI's although the rules only apply to the Councillor's interests, not his spouse / partner.
- (c) Non-Pecuniary Interests as defined in section 8 of the Code
- Councillor must register all such interests of himself.
  - Councillor must disclose all such interests of himself if it relates to business to be considered at any Council meeting.
  - After having declared a non-pecuniary interest, a Councillor can then participate in the Council meeting and vote unless:  
*“a member of the public with knowledge of the relevant facts would reasonably regard your interest as so significant that it is likely to prejudice your judgment of the public interest or your interest may give rise to a perception of conflict of interest or bias in which case you must withdraw”* (see section 10.3 of the Code).

### 3.4 The Standards Committee has previously granted dispensations to Councillors appointed to the Board of South Essex Homes Ltd to permit them to participate and vote on matters relating to the future management of the Council's housing stock and the ALMO.

### 3.5 The applications now before the Committee have been submitted by Councillors who own residential properties in the Borough which they let out. Such

Councillors have been unable to participate in recent Opposition Business debates relating to the possible introduction of a Compulsory Licensing Scheme and rent controls on private sector lettings. This is because the Councillors affected have DPI's under section 6.2(iv) of the Code.

- 3.6 At Council on 19<sup>th</sup> October 2017 the Opposition Business was debated and it was resolved as follows:

*“1. That Cabinet be recommended to introduce a compulsory licensing scheme for all residential landlords in the Borough, such scheme to supersede the voluntary arrangements with South East Alliance of Landlords (SEAL).*

*2. That Cabinet be recommended to lobby the Government for changes in the law so that there are rent controls on private sector landlords letting properties to tenants and those rent controls to have the effect of reducing the private sector rents to the level of social housing rents over the life time of parliament (i.e. 5 years).”*

- 3.7 At Cabinet on 7<sup>th</sup> November 2017 the following decisions were made:

*“1. That the proposal to introduce a compulsory licensing scheme be referred to the Policy & Resources Scrutiny Committee for consideration by way of pre-Cabinet scrutiny.*

*2. That the Deputy Chief Executive (People) be requested to write to the Secretary of State for Communities and Local Government to ascertain the Government's view on the introduction of rent controls on private sector landlords letting properties to tenants.”*

- 3.8 Accordingly, the subject matter of the Opposition Business is still live and as a consequence 8 Members (out of the 9 affected) have now applied for a dispensation to enable them to speak and vote at future meetings where the matters will be considered. The applications are attached at **Appendix 3**.

- 3.9 The applications can be split into two categories in terms of the business for which a dispensation is sought:

(a) 5 Members have sought a dispensation in respect of the Opposition Business, as set out above.

(b) 3 Members (Councillors Boyd, Hadley and Waterworth) have sought a wider dispensation to cover not only the Opposition Business, but any future landlord and tenant matters where they might otherwise be disqualified.

- 3.10 In terms of the reasons advanced by the 8 applicants, these refer directly or by implication to one or more of Grounds B, C and E as set out in section 4.2.1 below.

- 3.11 The applicants are entitled to make oral representations to the Committee.

#### 4. **Matters for the Standards Committee to consider and relevant considerations**

##### 4.1 The first thing the Committee needs to decide is whether dispensations are required at all

The answer to this is yes, for the reason set out in section 3.5 above.

##### 4.2 The second issue is whether the applications should be granted and the terms of the dispensations

In reaching a decision on this matter the Committee needs to consider:-

##### 4.2.1. The five circumstances in which a dispensation can be granted, as set out in S.33 Localism Act 2011:

**Ground A** That so many members of the decision making body have disclosable pecuniary interests in a matter that it would “impede the transaction of the business”;

Comment: This ground has little relevance as meetings will not be made inquorate, even if the applicants could not attend.

**Ground 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 likely outcome of any vote on the matter.

Comment: This ground (which has been pleaded by a number of the applicants) is relevant in terms of the Council’s overall decision making process. It is the case that both elements of the Opposition Business are “Executive Matters” for the Cabinet to decide and the Cabinet is drawn from one political party (with only one of its members affected). Nevertheless, the matters are likely to be considered by Policy & Resources Scrutiny Committee and Full Council before Cabinet makes a final decision and at these meetings proportionality will be significantly affected.

**Ground C** That the authority considers the dispensation is in the interests of person living in the authority’s area.

Comment: This ground requires a value judgement and is for the Committee to decide. This ground has been pleaded by several of the applicants who submit that it is in the interests of persons living in the Borough to allow them to speak and vote so they can represent residents and landlords in the Borough.

**Ground D** That, without the dispensation, no member of the Cabinet would be able to participate on this matter.

Comment: This ground has little relevance as only one Cabinet member is affected.

**Ground E** That the authority considers that it is otherwise appropriate to

grant a dispensation.

Comment: This ground requires a value judgement and is for the Committee to decide. One applicant has referred to this ground in the context of having special knowledge of housing matters.

#### 4.2.2 The terms of the dispensations:

As stated in section 3.9 above, three Councillors have applied for a wider dispensation to cover not only the Opposition Business, but any future landlord and tenant matters where they might otherwise be disqualified.

The Committee needs to decide whether to limit any dispensations granted to the specific Opposition Business, or whether to grant a much wider general dispensation to those 3 Members who have applied, to cover future issues which may arise, even though they are unknown at this stage.

#### 4.2.3 Material Considerations

Although the Localism Act 2011 changed the rules, guidance issued by the now defunct Standards Board for England, is still useful in this regard:

##### **Considerations for dealing with dispensation requests**

Q *Is the nature of the Member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?*

It is unlikely that it would be appropriate to grant a dispensation to a Member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the Member would probably

outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party.

Q. *Is the interest common to the member and a significant proportion of the general public?*

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

Q. *Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?*

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member’s expertise before making a decision which would benefit it financially.

Q. *Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member’s interest not a financial one?*

In circumstances such as these, the Standards Committee might believe that it is in the interests of the authority’s inhabitants to remove the incapacity from speaking or voting.

4.3 The third issue is if dispensations are granted, whether they should extend to participation in debate only, or participation and voting

This is a value judgment to be made by the Committee.

It should be noted that in 2015 the dispensations relating to South Essex Homes Ltd. extended to participation and voting.

4.4 The fourth issue is the length of time the dispensations should operate for

Any grant of dispensation would need to specify how long it lasts for, up to a maximum of 4 years.

If the applications are approved they clearly need to be granted for a reasonable period and it would be very cumbersome to keep reverting back.

## **5. Summary/Conclusions**

5.1 The Committee needs to make a decision on the four matters set out in the Recommendations in section 2 above.

5.2 The Committee needs to carefully weigh up the arguments and determine whether the applications fulfil the relevant grounds as set out in section 4 above. If the Committee is satisfied that the grounds have been met, it then needs to consider the terms of the dispensations and whether the dispensations should extend to participation in the debate only or participation and voting. Clear reasons need to be given for the decisions made.

5.3 In principle, if the dispensations are granted, the Members concerned could decide not to exercise the dispensation in a particular instance, particularly if the matters became “too close to home.” However the Committee should not take much notice of this possibility.

5.4 The views of the Independent Persons who attend meetings of the Standards Committee will be useful to help the Committee decide what to do.

## **6. Other Options**

The Committee can agree the applications as it thinks fit.

## **7. Reasons for Recommendations**

To enable the Committee to focus on the matters to be decided.

## **8. Corporate Implications**

### **8.1 Contribution to Council's Vision & Corporate Priorities**

Excellent Council / Good Governance

### **8.2 Financial Implications - None**

### **8.3 Legal Implications - As set out in the report**

### **8.4 People Implications - None**

### **8.5 Property Implications - None**

### **8.6 Consultation - Not applicable**

### **8.7 Equalities and Diversity Implications - No issues**

### **8.8 Risk Assessment - The Committee must determine the applications properly**

### **8.9 Value for Money - No issues**

### **8.10 Community Safety Implication - No issues**

### **8.11 Environmental Impact - No issues**

## **9. Background Papers**

Localism Act 2011

## **10. Appendices**

**Appendix 1 – Report to the Standards Committee held 11<sup>th</sup> July 2012  
(without the Appendices) and associated Minutes**

**Appendix 2 – Members' Code of Conduct**

**Appendix 3 – Applications for Dispensations from Councillors Ayling,  
Boyd, Evans, J Garston, Habermel, Hadley, Salter and  
Waterworth.**