

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Monitoring Officer

to

Standards Committee

on

28th February 2017

Report prepared by: John Williams,
Director of Legal & Democratic Services

Requests for Dispensations

A Part 1 Public Agenda Item

1. Purpose of Report

For the Standards Committee to consider and determine applications for dispensations under S.30 Localism Act 2011 submitted by Councillors David Burzotta, Meg Davidson and David Norman MBE.

2. Recommendations

That the Standards Committee determines:

- Whether the dispensations are required;
- Whether to grant 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 At its meeting on the 19th July 2012, the Council agreed the new standards regime for Councillors and co-opted members pursuant to the provisions of the Localism Act 2011. The new regime included:

- A new Members' Code of Conduct ("the Code").
- Some standard dispensations applicable to all Councillors so they can debate and vote on matters where most are likely to have a clear disqualifying interest, such as setting the Council Tax and approving the Members' Allowances Scheme.

- 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 disqualifying interest. (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).

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

In summary these new 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 (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” (section 10.3 of the Code)
 - If a Councillor has a disqualifying interest under section 10.3 of the Code then he can still participate and vote if he first obtains a dispensation from the Standards Committee.

3.3 The Council currently appoints 3 Councillors to the Board of South Essex Homes Ltd (SEH), which is an arm's length management organisation (ALMO) established in 2005 to take on responsibility for managing the Council's housing stock.

The 3 Members appointed by the Council in May 2016 are Councillors David Burzotta, Meg Davidson and David Norman MBE.

As directors of the company, the law requires that they act in the best interests of the company.

Council appointed Board members were at one time entitled to various allowances, albeit of a relatively modest nature (maximum was approximately £1,500 p.a.). However this is no longer the case as detailed in a report to Cabinet on the 5th November 2013 (minute 444 refers).

Since 2012, the Council has considered reports on the future of the management of the Council's housing stock and the ALMO and the matter may well be considered at further Council meetings over coming months.

3.4 I have previously advised Council members on the Board that if they attend any Council or Committee meeting where the future of the management of the Council's housing stock and the ALMO is under consideration:

- (a) Then if they receive allowance payments, they will have a DPI under section 6.2 of the Code, namely an interest which relates to or is likely to affect ***“Any appointment, office, trade, profession or vocation carried on by you or a Relevant Person for profit or gain”***; and
- (b) In any event they will have a non-pecuniary interest under section 8(i) of the Code in that the matter ***“relates to or is likely to affect any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority”***. Furthermore Councillor Board members will be in considerable difficulties in terms of dealing with such fundamental issues in a fair way or being seen to deal with the matter fairly. Consequently in my view they have a **disqualifying** non-pecuniary interest.

Therefore on the basis of (a) and / or (b), it is my view that Councillor Board members should not take part in debate at any Council meetings but should withdraw, unless they first obtain a dispensation from the Standards Committee.

3.5 At its meetings on 15th January and 19th February 2015 the Standards Committee considered applications for dispensations submitted by Councillors Assenheim, Betson, Butler and McMahon under Section 30 of the Localism Act 2011.

These councillors had been appointed by the Council to the Board of South Essex Homes Ltd. (SEH) and wanted to be able to speak and vote at Council meetings on matters relating to SEH and the management of the Council's housing, notwithstanding having an interest under the Members' Code of Conduct.

The Committee granted dispensations to the four councillors to both speak and vote up until 9th October 2016 (Minutes 559 and 656 refer).

In reaching this decision the Committee recognised that the councillors had no DPI or Pecuniary Interest, the knowledge & expertise of the councillors would be of considerable benefit to the Council and there would be no damage to public confidence.

3.6 Councillors Burzotta, Davidson and Norman MBE have now submitted applications for dispensations to enable them to speak and vote at Council meetings where SEH business is being considered. This is in line with the dispensations previously agreed as referred to in 3.5 above. The applications are attached at **Appendix 1**.

3.7 When the Standards Committee dealt with the previous dispensation applications in 2015, the applicants were permitted to make oral representations to the Committee to support their applications, but none of them did so.

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

I believe the answer to this is yes, for the reasons set out in 3.4 above, although the Councillors will no longer have a DPI as they are not entitled to receive allowances.

4.2 The second issue is whether the applications should be granted

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:

(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 will not apply in this case as meetings will not be made inquorate even if the 3 Members could not attend.

(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 has little relevance as the 3 Board members are drawn from 6 political groups on the Council.

(c) That the authority considers the dispensation is in the interests of persons living in the authority’s area.

Comment: This ground requires a value judgement and is for the Committee to decide.

- (d) That, without the dispensation, no member of the Cabinet would be able to participate on this matter.

Comment: This ground is not relevant.

- (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.

4.2.2 The applications of the 3 Members and any oral representations which they make.

4.2.3 Material Considerations

Although the Localism Act 2011 has changed the rules, guidance issued by the now defunct Standards Board for England, is very 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?*

For instance, 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.

4.2.4. The previous decisions of the Standards Committee when it dealt with dispensations are also a material consideration.

The applications before the Committee are essentially the same as those in 2015. The applicants will have a disqualifying non-pecuniary interest when the management of the Council's housing stock and the ALMO is under consideration as detailed in 3.4(b) above.

The Standards Committee also granted dispensations to 5 councillors in 2012, but the circumstances were different: In 2012 the councillors received various allowances (see 3.3 above) and the dispensations granted did not extend to voting.

4.2.5 Views of the Independent Persons who attend meetings of the Standards Committee.

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. However in 2015 the dispensations granted 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. Other Options

The Committee can agree the applications as it thinks fit.

6. Reasons for Recommendations

Not applicable.

7. Corporate Implications

- 7.1 Contribution to Council's Vision & Corporate Priorities
Excellent Council / Good Governance
- 7.2 Financial Implications
None
- 7.3 Legal Implications
As set out in the report
- 7.4 People Implications
None
- 7.5 Property Implications
None
- 7.6 Consultation
Not applicable
- 7.7 Equalities and Diversity Implications
No issues
- 7.8 Risk Assessment
The Committee must determine the applications properly
- 7.9 Value for Money
No issues
- 7.10 Community Safety Implications
No issues
- 7.11 Environmental Impact
No issues

8. Background Papers

Localism Act 2011

9. Appendices

Appendix 1 – Applications for Dispensations from Councillors David Burzotta, Meg Davison and David Norman MBE.