

APPLICATION FOR DISPENSATION

Report of the Chief Legal Officer

Author: Kathryn Pettitt, Chief Legal Officer (Tel: 01992 555527)

1. Purpose of Report

- 1.1 To consider the request from R. I. N. Gordon for a dispensation under the Localism Act 2011.

2. Summary

- 2.1 The Localism Act 2011 (the '2011 Act') introduced the concept of Disclosable Pecuniary Interests ('DPIs'). The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 defined those interests that would constitute DPIs under the 2011 Act. It is a criminal offence for members to fail to register a DPI or to speak and/or vote where they have a DPI unless they have obtained a dispensation.
- 2.2 The Council has delegated the power to the Standards Committee to grant dispensations in respect of DPIs.

3. Recommendations

1. That a dispensation is granted pursuant to the Localism Act 2011 to allow R. I. N. Gordon to participate, debate and vote in business in which he has a disclosable pecuniary interest by virtue of his wife having a beneficial freehold interest in the premises of her former veterinary practice and contiguous land lying south of Tilekiln Farm, Standon Road, Little Hadham (title number HD394474) provided that the dispensation does not apply in instances where the business to be considered directly affects the financial position of R.I.N Gordon or his wife.
2. That the dispensation mentioned in 1 above applies for 4 years from the date hereof.

4. Background

- 4.1 The 2011 Act introduced the concept of DPIs and the Disclosable Pecuniary Interest Regulations 2012 define the categories of interest which comprise DPIs. A member must disclose any matter which falls within the categories of disclosable pecuniary interest if it applies to themselves or their partner (which means a spouse or civil partner, a person with whom the member is living as husband or wife, or a person with whom they are living as if they are civil partners).
- 4.2 One of the categories of disclosable pecuniary interests is:
- ‘Any beneficial interest in land which is within the area of the relevant authority’.
- 4.3 It is a criminal offence if a member who is present at a meeting where he/she has a DPI in any matter to be considered or is being considered participates in any discussion of that matter or votes on the matter. These restrictions, however, do not apply where the member has applied for and been granted a dispensation.
- 4.4 Clearly if the item relates directly to the member’s DPI then the provisions mentioned in paragraph 4.3 would apply. The provisions of the 2011 Act, however, are widely drawn and, as such, the provisions mentioned in 4.3 above may apply even if there is only a minimal impact on the member’s DPI or the DPI is only indirectly affected by the matter to be considered or being considered at the meeting.
- 4.4 There were two court cases in 2015 relating to members who voted on matters where it was alleged that they should not have participated due to the matter affecting an interest that they had registered as a DPI. In neither case did it appear that the DPI was directly affected by the subject matter of the Report being considered. In one case the Councillor concerned was found guilty of an offence by the Magistrates’ Court and given a six months conditional discharge, the District Judge commenting that the member could have applied for a dispensation. In the other case the High Court ruled that the member’s DPI was not engaged as it was not directly affected by the matter under consideration. Given the uncertainty the Monitoring Officer considers that it is appropriate for members to seek a dispensation if there is likelihood that the member’s DPI is engaged indirectly.
- 4.5 Robert Gordon has included in the register of Member’s interests as a disclosable pecuniary interest land lying south of Tilekiln Farm, Standon Road, Little Hadham (HD394474). This interest arises by virtue of his wife’s beneficial freehold interest in the premises of her former veterinary practice and contiguous land. The land is in the vicinity of the A120 Little Hadham by-pass.

- 4.6 Given the uncertainty around when a DPI may be engaged, Robert Gordon has requested that a dispensation be granted to allow him to participate in meetings and business of the Council where the DPI referred to in paragraph 4.5 above might be engaged provided that the business does not directly affect his DPI.

5. Application for Dispensation

- 5.1 The 2011 Act provides that, following a written request made to the proper officer, dispensations can be granted to enable members to participate in meetings where they have a DPI provided that certain grounds are satisfied. The grounds for the grant of a dispensation are, if having regard to all the relevant circumstances, the Council considers that:
- 5.1.1 without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
 - 5.1.2 without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
 - 5.1.3 the grant of the dispensation would be in the interests of the persons living in the authority's area;
 - 5.1.4 without dispensation each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive;
 - 5.1.5 it is otherwise appropriate to grant a dispensation.
- 5.2 The Monitoring Officer considers that the grounds set out in paragraphs 5.1.3 and 5.1.5 above apply to the application which has been received. Reference to the A120 Little Hadham By-Pass will be included in many reports to meetings of the Council (including Cabinet and County Council) at which Robert Gordon will be present. Such reports include the Council's Integrated Plan and the project may also be referred to in finance monitors, performance and other general update reports. It is important that the Leader of the Council is able to participate in all matters relating to the business of the Council unless it directly affects his DPI. The effect of not granting the dispensation recommended above would be that there is a risk that the business of the Council would be impeded.
- 5.3 Dispensations can be granted for a period of up to four years. It is proposed that a dispensation be granted for the period of 4 years.

5.3 Dispensations can be to speak and vote; or vote; or speak.

6. Financial Implications

None

Background Information

Chapter 7 Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

<http://www.legislation.gov.uk/uksi/2012/1464/made/data.pdf>