
Subject: REQUEST FOR DISPENSATIONS

Meeting and Date: GOVERNANCE COMMITTEE – 28 SEPTEMBER 2023

Report of: MONITORING OFFICER

Classification: UNRESTRICTED

Purpose of the report: To consider whether to grant dispensations to the applicants to relieve them from the restriction contained within Paragraph 5 of the Code of Conduct for Members (participation in discussions and voting).

Recommendation: To consider the applications and determine whether a dispensation should be granted in the case of one or more of the applicants.

1. Summary

- 1.1 The Members specified in Appendix 1 to this report have submitted requests to the Governance Committee for the granting of dispensations relieving members from both of the restrictions contained in section 31(4) of the Localism Act 2011 and paragraph 5 of the Council's Code of Conduct for Members.
- 1.2 The restrictions referred to in paragraph 1.1 are:
- (a) participating, or participating further, in any discussion of the matter in which they have an interest at the meeting; or
 - (b) participating in any vote, or further vote, taken on the matter in which they have an interest at the meeting.

2. Introduction and Background

- 2.1 At the meetings of the Cabinet and Overview and Scrutiny Committee in September 2023 it became apparent that those Members who were also garden waste subscribers would potentially have an Other Significant Interest (OSI) in the report on the Garden Waste Containerisation Project.
- 2.2 This is because the financial position of those Members who were garden waste subscribers might reasonably be regarded as being affected to a greater extent than the majority of other council tax payers, rate payers or inhabitants of the electoral ward affected by the decision and that a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice the Members judgement of the public interest.
- 2.3 While a number of Members declared an Other Significant Interest in the Garden Waste Containerisation Project item of business, it should be noted that in both cases the Cabinet and Overview and Scrutiny Committee remained quorate and were able to transact the item of business.

Dispensations

- 2.4 The Governance Committee has the power under Part 3 (Responsibility for Functions) of the Council's Constitution to grant dispensations pursuant to S33(2) of the Localism Act 2011 and Paragraph 8 of the adopted Code of Conduct where:

- (a) 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.
 - (b) That the authority considers that the dispensation is in the interests of persons living in its areas; or
 - (c) Where the Committee considers that it is otherwise appropriate to grant a dispensation.
- 2.5 Paragraph 8(2) of the Code of Conduct provides that a dispensation may be granted only if, after having had regard to all relevant circumstances, the committee considers that:
- (a) 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;
 - (b) 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;
 - (c) granting the dispensation is in the interests of persons living in the authority's area;
 - (d) it is otherwise appropriate to grant a dispensation.
- 2.6 The effect of the disposition (if granted) would be to enable the Member to participate and vote in matters relating to the matter for which the dispensation was granted on the same basis as another member of the Council who did not have the interest.
- 2.7 Where a Member is granted a dispensation, they should for transparency indicate at the meeting that they have a dispensation for an item of business that engages it.
- 2.8 A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

Governance Committee Members Considering the Dispensation Requests

- 2.9 The issue of whether a Member with an interest in the Garden Waste Containerisation Project can make a decision in respect of an application for a dispensation has been considered by the Monitoring Officer during the preparation of this report.
- 2.10 It is the view of the Monitoring Officer that a member can consider both their own application and an application for another Member where they have the same interest. This is based on S.33(4) of the Localism Act 2011 which effectively allows a member who has a Disclosable Pecuniary Interest in a matter to participate in discussions and decisions about whether to grant a dispensation.
3. **Identification of Options**
- 3.1 Option 1: To grant the dispensations with immediate effect to relieve the specified Member from the restriction contained within Section 31(4) of the Localism Act 2011 and Paragraph 5 of the Code of Conduct (participation in discussions and voting).
- 3.2 Option 2: To not grant the dispensations to one or more councillors.

- 3.3 Option 3: To grant the dispensation for a different duration or on a different basis from that requested.

4. **Evaluation of Options**

- 4.1 An application for the granting of a dispensation by the Governance Committee does not mean that one will be granted by the Governance Committee. It is for the Governance Committee to consider the application on its merits against the criteria and determine the outcome of the application.
- 4.2 Although the grant of the dispensations is at the discretion of the Governance Committee, this is not quite a “free hand”. A long-established body of English law requires that discretions are exercised in accordance with certain legal principles. Essentially, the decision maker must have regard to the relevant, ignore the irrelevant and not arrive at a decision that is ‘perverse’ in the sense that no decision maker properly directing itself could have arrived at such a decision.
- 4.3 The concept of “having had regard to all relevant circumstances” mentioned in paragraph 8(2) of the Code of Conduct is quite wide. The circumstances could vary enormously but it is submitted that the Committee may find the following relevant (this is not intended to be an exhaustive list)
- (a) How immediate or direct the interest is.
 - (b) The quantum of the interest (in financial terms).
 - (c) The nature of the business to be conducted.
 - (d) The extent to which the authority could obviate the need for dispensations to be granted by making its decision in another way (e.g., by a body which is composed of persons not having an interest).
- 4.4 If the committee is minded to approve the applications, it is submitted that they would be entitled to base their decision on sub- paragraphs (b), (c) or (d) of paragraph 8(2) of the Code of Conduct. Please see paragraph 2.5 above.
- 4.5 If the Governance Committee does decide to grant one or more dispensations, then it is recommended that the dispensation should come into force with immediate effect and that they remain in effect for the period specified by the Governance Committee, unless revoked by the Committee before then.
- 4.6 If granted it is recommended that the dispensations be granted in the form attached at Appendix 3 to this report.

5. **Resource Implications**

There are no resource implications.

6. **Appendices**

Appendix 1 – Applications for Dispensations

Appendix 2 – Code of Conduct

Appendix 3 – Example Notice of Dispensation

7. **Background Papers**

Dover District Council's Code of Conduct

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