
Request for Dispensation - Summary Report

Committee considering report:	Governance and Ethics Committee (Virtual)
Date of Committee:	5 January 2016
Report Author:	Moira Fraser
Forward Plan Ref:	N/a

1. Purpose of the Report

- 1.1 The Governance and Ethics Committee is asked to consider an application for a dispensation from Councillors Howard Bairstow and David Goff to speak and vote on items relating to the A339/ Fleming Road Junction Compulsory Purchase Order at the Special Council meeting on the 21 January 2016 (if required) and any other meeting that discusses (in the sole opinion of the Monitoring Officer) the same issue or matters arising from the same issue.

2. Recommendation

- 2.1 Members are asked to consider and if appropriate agree the request for a dispensation.

3. Implications

- 3.1 **Financial:** None identified
- 3.2 **Policy:** The issues set out in this report are covered in the previously agreed protocol for granting Dispensations under the Localism Act 2011.
- 3.3 **Personnel:** None
- 3.4 **Legal:** The Council adopted processes in regard to dispensations comply with the Localism Act 2011.
- 3.5 **Risk Management:** The recommendations set out in this report do not constitute a significant risk to the Council.
- 3.6 **Property:** None
- 3.7 **Other:** None

4. Other options considered

- 4.1 As set out in the report

Executive Summary

1. Introduction

- 1.1 Regulations came in to force on 01 July 2012 following the introduction of the Localism Act 2011. Section 33 of these regulations prescribes the circumstances in which the Governance and Ethics Committee, Sub-Committees and the Monitoring Officer may grant dispensations to Councillors to speak and/or vote at a meeting in which they have a Disclosable Pecuniary Interest under Section 31 of the Act. If a Member acts in accordance with the granting of such a dispensation, any participation in business prohibited by the mandatory provisions of the Code of Conduct is not a failure to comply with the authority's Code.
- 1.2 These regulations refer to the circumstances where a Councillor, finds they are in a position where they have to declare a disclosable pecuniary interest or other interests under the Code of Conduct which would ordinarily then require them to leave the meeting. These councillors might be able to obtain a dispensation (permission) from the Governance and Ethics Committee, Sub-Committee or Monitoring Officer to stay in the meeting after declaring the interest and either speak or speak and vote according to any dispensation granted.
- 1.3 The Governance and Ethics Committee, Sub-Committee or Monitoring Officer may grant a dispensation to a Member in the following circumstances:
 - (i) so many Members of the decision making body have Disclosable Pecuniary Interests in a matter that it would "impede" the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result.
 - (ii) without the dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
 - (iii) the authority considers that the dispensation is in the interests of persons living in the authority's area.
 - (iv) without a dispensation no Member of the Executive would be able to participate in a particular matter. They suggest that where the Executive would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Executive. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
 - (v) the Council considers that it is "otherwise appropriate" to grant a dispensation. This is a particularly wide provision as to some extent is (iii) above.
- 1.4 It is considered that grounds (i) and (iv) are objective and dispensations on these grounds have been delegated to the Monitoring Officer with an appeal to the Governance and Ethics Committee.
- 1.5 Grounds (ii), (iii) and (v) are rather more complex and subjective and the discretion to grant dispensations on these grounds remains with Governance and Ethics Committee after consultation with the Independent Person.

2. Request to Grant Dispensation

2.1 Requests for dispensations must:

- (a) be made in writing
- (b) be made to the Monitoring Officer of the Council be made by an individual Member or Co-Opted Member of the authority

2.2 The information below was submitted to the Monitoring Officer and explains the written request which has been made by Councillors Howard Bairstow and David Goff for a dispensation to enable them to take part in a debate and/ or vote upon a matter.

“At the provisional Special Council meeting on Thursday 21st January 2016 there may be a discussion of the A339/Fleming Road Junction Compulsory Purchase Order (CPO).

This CPO includes part of Victoria Park which Newbury Town Councillors have an interest in. Dual hatted Councillors have therefore applied for a dispensation to speak and vote on this item at the meeting.”

2.3 Councillors Adrian Edwards, Anthony Pick, Lynne Doherty, Mike Johnson, Jeff Beck, James Fredrickson and Jeanette Clifford had previously been granted a dispensation to speak and vote on this matter at the meeting on 10 December 2015 and any other meeting that discusses (in the sole opinion of the Monitoring Officer) the same issue or matters arising from the same issue. The item was deferred at that meeting.

2.4 In this instance it is considered that grounds ii and v may be applicable.

3. Considerations in granting a dispensation

3.1 The Governance and Ethics Committee should take the following into consideration when determining whether or not a dispensation should be granted:

- (i) they should weigh up the effect of Members’ disclosable pecuniary interest against the outcome of the vote if they are not participating in the vote.
- (ii) they should consider whether the nature of the interest in question is such that public confidence in the authority would be damaged if that Member were allowed to vote.
- (iii) they should look at whether the interest in question is one that is common to both the Member and to a significant proportion of the population.
- (iv) account should also be taken of the expertise and knowledge of the Member and whether this justifies their participation in the item in question. For example, if members of Police and/or Fire authorities would be able to bring their expertise by addressing the meeting.
- (v) Governance and Ethics Committee Members should have regard to whether the business in question relates to a voluntary or public body which is to be considered by the Overview and Scrutiny Management Commission, and additionally whether the interest is a financial one.
- (vi) if a dispensation not being granted would mean the meeting was not quorate, this might be a reason to grant the dispensation.

4. Procedure

1. The Governance and Ethics Committee should consider the implications for the dispensation set out at 3.1 above. This consideration may also take account of any other relevant circumstances or local criteria.
2. The Governance and Ethics Committee should determine the nature of any dispensation they are minded to grant:
 - (a) whether the applicant can speak and not vote; or
 - (b) whether the applicant can participate fully and vote.
3. The Committee can also decide the length of the dispensation (not more than four years).
4. The regulations do not allow for the Governance and Ethics Committee to grant a general dispensation to cover any situation where a disclosable pecuniary interest may arise.
5. If the Committee grants a dispensation it should do so in writing and before the meeting(s) in question is/ are held.
6. The Governance and Ethics Committee may decide to refuse an application for a dispensation. This is within their discretion under the regulations.
7. A written record of the decision taken must be kept and placed with the Register of Interests maintained under Section 81(1) of the Local Government Act 2000.

5. Recommendation

- 5.1 While the Monitoring Officer has the ability to consider a request for a dispensation in certain circumstances this is not one which the Monitoring Officer considers to fall within his remit. The Monitoring Officer considers that this request would fall within criterion (iii) and (v) in that the Council considers it to be in the interests of persons living in the authority's area and 'otherwise appropriate'. As a Member of Newbury Town Council (NTC) Dual Hatted Members were previously advised that, they had a personal interest in the item because this will affect NTC (Para 4.2.2 West Berkshire Council's Code of Conduct). Members with a personal interest also have an 'Other Interest' in the business of the Council where that business affects the financial position of a relevant body, which would include the Town Council (Para 4.5.1).
- 5.2 Where a Member has an 'Other Interest', they can only make representations to the extent that the public would be able to do so. As the public are not entitled to speak at meetings of Council such Members were asked to leave the meeting where it was previously discussed.
- 5.3 The Monitoring Officer advises that all Members that have applied are granted a dispensation to speak and vote on this item at the special meeting (21 January 2016 Full Council) on the basis that the interest is an 'Other Interest' and not a DPI in accordance with the Council's Code of Conduct and that the potential for bias is limited in that the land the subject of the CPO is to be surrendered shortly once the relevant paperwork is completed.

- 5.4 All three Independent Persons (IPs) were consulted. Two of the IPs concurred with the Monitoring Officer while the third felt that a dispensation should not be granted,
1. Lindsey Appleton concurred with the view of the Monitoring Officer and stated that the potential for bias is limited in reality and she would be minded therefore to allow a dispensation in this case.
 2. James Rees concurred with the view of the Monitoring Officer.
 3. Mike Wall disagreed with the view of the Monitoring Officer and stated that 'On balance I would refuse dispensation. As there is an issue with perception and public confidence is relevant. '
- 5.5 The Governance and Ethics Committee is asked to determine:
- (a) whether a dispensation should be granted;
 - (b) if they are minded to grant a dispensation:
 - (i) whether the applicant can speak and not vote; or
 - (ii) whether the applicant can participate fully and vote
 - (c) if they are minded to grant a dispensation how long they are willing to grant the dispensation for.

6. Appendices

There are no appendices to this report