

Committee: Dispensations Sub (Standards) Committee	Date: 21 August 2018
Subject: Request for a Dispensation under the Localism Act 2011	Public
Report of: Report of Town Clerk	For Decision
Report author: Martin Newton	

Summary

A Member has requested a dispensation to speak on a specified matter where he would otherwise have a disclosable pecuniary interest by virtue of his profession and his beneficial interest in land within the City.

Recommendation

Your Committee is asked to determine the application for a dispensation.

Main Report

Background

1. A Member has submitted a request for a dispensation. The Standards Committee has requested that all such applications are accompanied by a covering report.

Disclosable pecuniary interests under the Localism Act 2011

2. Under the Localism Act 2011, The Relevant Local Authorities (Disclosable Pecuniary Interests) Regulations 2012 and the City Corporation's Member Code of Conduct there are a number of disclosable pecuniary interests that prevent a Member from participating in any discussion or vote on a connected item of business. The disclosable pecuniary interests that are potentially engaged in this case are:
 - (a) Any employment, office, trade, profession or vocation carried on for profit or gain;
 - (b) Any beneficial interest in land which is within the area of the relevant authority.

3. The Localism Act 2011 does not provide any additional guidance on judging whether a disclosable pecuniary interest is engaged or not. It simply states that the prohibition on speaking or voting on a matter is engaged where a Member:
 - (a) is present at a meeting;
 - (b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting; and
 - (c) is aware that the condition in paragraph (b) is met.
4. It is up to individual Members to make a judgement whether they have a disclosable pecuniary interest in relation to any particular item of business. This will be the case where a decision would materially affect a Member's interest in land, for example by materially affecting the value of that land, the prospects of selling that land, or the use and enjoyment of that land.
5. A Member also commits a criminal offence if, without reasonable excuse, they participate in any discussion or vote on any City Fund matter in which they have a disclosable pecuniary interest. For this reason we would always advise a Member to err on the side of caution. A Member who is found guilty of such an offence can be fined up to £5,000 and disqualified from holding office for up to five years. A prosecution may only be instigated by or on behalf of the Director of Public Prosecutions (DPP).

Granting dispensations under the Localism Act 2011

6. A relevant authority may, on a written request made to the proper officer of the authority by a Member of the authority, grant a dispensation relieving the Member from either or both of the restrictions on speaking or voting in cases described in the dispensation. A dispensation must specify the period for which it has effect, which may not exceed four years. The granting of such dispensations is a function of this Committee and its Dispensations Sub-Committee. A relevant authority may only grant a dispensation if, after having had regard to all relevant circumstances, the authority:
 - (a) considers that 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) considers that 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;*
- (c) considers that granting the dispensation is in the interests of persons living in the authority's area;
- (d) if it is an authority operating executive arrangements, considers that without the 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;* or
- (e) considers that it is otherwise appropriate to grant a dispensation.

* Grounds (b) and (d) are not directly applicable to the City Corporation but are included for completeness and context.

Additional factors

7. Subject to the specific statutory grounds for granting a dispensation, Members may also wish to take into account the following (non-exhaustive) additional factors:
 - (i) whether the nature of the Member's interest is such that to allow them to participate would risk damage to public confidence in the conduct of the City Corporation's business;
 - (ii) whether the interest is common to the Member and a significant proportion of the general public;
 - (iii) whether the Member was elected on a platform that they would specifically address the item or items of business for which the dispensation is sought;
 - (iv) whether the participation of the Member in the business that the interest relates to is justified by their particular role or expertise;
 - (v) whether the request is for a dispensation to (a) speak at the meeting with the same rights as a member of the public; (b) participate fully in the debate as a Member of the decision-making body in question; or (c) participate fully in the debate as a Member of the decision-making body in question and vote on the business.

8. As previously stated, the onus is on individual Members to decide whether they have a disclosable pecuniary interest in any given matter. Therefore, the Committee should assume for present purposes that any dispensation being sought is required in order to participate, and you

should not refuse a request simply on the basis that a dispensation is not thought to be necessary. Any dispensation granted is entirely permissive in nature and does not impose any restrictions on speaking or voting where no such restrictions otherwise exist.

The application and specific considerations

9. A request for a dispensation has been received from Oliver Sells and the relevant application form is appended. This report does not seek to duplicate the information that is contained in that application form. However, where there is additional relevant information this is set out below.
10. Oliver Sells is a Common Councilman for the Ward of Farringdon Without and a Member of the Planning and Transportation Committee. The request form asks for a dispensation to speak on a planning application for temporary structures at the Inner Temple at the Planning and Transportation Committee on 11 September 2018. At this stage, it is not certain that the planning application will be considered by the Planning and Transportation Committee on 11 September and Oliver Sells has subsequently confirmed to the Town Clerk by email that he would therefore wish his request to be considered for either 11 September or a later meeting when the application is considered.
11. Oliver Sells previously applied for a dispensation to speak and/or vote on any matter relating to his residency in the City of London and membership of the Inner Temple. The application was refused by the Standards Committee in May 2017 as that Committee considered that further information was required and that the application was too wide reaching.
12. The Planning and Transportation Committee is made up of 35 members, including one other representative from Farringdon Without. The quorum for that Committee is any nine members. No further dispensation requests have been received for the meeting on 11 September 2018. Two other Members of the Planning and Transportation Committee are barristers practising within the Inner Temple, but whether they have a disclosable pecuniary interest that is engaged by this application will depend on their own particular circumstances.

Conclusion

13. Your Committee is asked to determine this application in accordance with the criteria set out under the Localism Act 2011.

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