

**CITY OF LONDON CORPORATION**  
**(“The Corporation”)**

**DISCLOSABLE PECUNIARY INTEREST**  
**(“DPI”)**

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**OPINION**

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INTRODUCTION

1. I am instructed to advise the Corporation. My advice is sought in relation to an allegation that a Member of the Corporation (“the Member”) both participated in a debate and voted in respect of a decision (“the Delegation Decision”) whether or not to recommend to the Court of Common Council the delegation to a neighbouring authority of a planning decision (“the Planning Decision”).

2. The question is whether the Member had with respect to the Delegation Decision a DPI in a flat adjacent to the development site (“the Site”) the subject matter of the Planning Decision, in breach of the requirements of the:-

- (1) Localism Act 2011 (“LA 2011”); and
- (2) The Corporation’s Members’ Code of Conduct (“the Code”).

THE FACTS

3. The Member is a:-

(1) Common Councilman; and

(2) Member of the Corporation's Planning and Transportation Committee ("the PTC").

4. She has registered a DPI in 21 Hatfield House. That is a block of flats. That is adjacent to the Site.

5. That is the Richard Cloudesley School Site. The Site is the subject matter of a planning application by the Corporation ("the Planning Application").

6. This is to provide:-

(1) A new School; and

(2) "Affordable housing".

7. Only a small part of the Site (“the City land”) is located in the Corporation’s area. The majority of the Site is within the London Borough of Islington (“Islington”).

8. Hatfield House is situated on the Golden Lane Estate. The Member has previously applied for a dispensation to speak and vote on matters relating to that Estate. However, that application was rejected, by the Corporation’s Standards Committee (“the SC”).

9. The Corporation’s Officers concluded that the most efficient and effective method of managing the process would be for the Corporation to delegate the determination of the application in relation to the City land to Islington. A report was presented to the PTC on 29 January 2018 recommending that the PTC recommend to the Court of Common Council the delegation of the Planning Decision in respect of the City land to Islington.

10. The matter was debated by the PTC. The recommendation was defeated by 11 votes to 9.

11. The Member:-

- (1) Spoke against the Officer recommendation; and
- (2) It seems voted against it.

12. Following the PTC Meeting, another Member, present at the Meeting, raised with my Instructing Solicitor, who is also the Corporation's Monitoring Officer ("the MO") serious reservations about the Member's conduct, in relation to her obligations:-

- (1) Under Section 31 of LA 2011; and
- (2) Paragraph 13 of the Code.

13. However, no formal complaint has been made.

#### CONTEXT

14. The Corporation's established general process for handling member misconduct allegations is to require:-

- (1) The submission of a written complaint; and
- (2) Then, a filtering exercise carried out by the SC's Assessment Sub-Committee ("the Sub-Committee").

15. Nonetheless, in circumstances where there are reasonable grounds to believe a breach of the Code has occurred, of which the Corporation is aware from its own knowledge and records, such as participation in a decision despite a DPI, my Instructing Solicitor has taken the view that the SC of itself, or through officer delegation under the urgency procedure, is entitled to convene a meeting of the Sub-Committee, to determine whether there should be an investigation in the absence of a complaint.

16. This is to avoid criticism and reputational damage which could arise from the Corporation being seen to ignore potential breaches of the Code and the statutory requirements in relation to DPIs within its knowledge. Furthermore, it avoids the situation where powerful or influential members can avoid being held to account simply because no individual is prepared to be seen to challenge them. In Hussain v Sandwell MBC (2017) EWHC 1641 (Admin) the complaint against a senior member was made by the Council's Chief Executive.

17. Following consultation with the Chairman and Deputy Chairman of the SC, the Town Clerk authorised, on 9 February 2018, the convening of the Sub-Committee and that my Instructing Solicitor should refer the matter to the

Commissioner of the City of London Police and inform the Member of the allegations against her and the action being taken.

### LEGAL FRAMEWORK

18. The key elements of the statutory scheme under LA 2011 are as follows:-

- (1) Local authorities are obliged to promote and maintain high standards of conduct by members of the authority (Section 27);
- (2) Local authorities must secure that their Code is consistent with the Nolan principles (Section 28);
- (3) The MO of each authority must establish and maintain a Register of Interests of members of the authority (Section 29);
- (4) A member of a relevant authority must, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority, notify the authority's MO of any DPIs which the person has at the time when the notification is given (Section 30(1)).

- (5) A “pecuniary interest” is a DPI in relation to a person if it is of a description specified in regulations made by the Secretary of State (“the SoS”) and either it is an interest of the member, or that of his/her spouse or civil partner, or person with whom she/he is living *as if* a spouse or civil partner (where she/he is aware that other person has the interest) (Section 30(3));
- (6) The authority’s MO is required to enter the notified interests in the authority (“the Register”) (Section 30(4));
- (7) A member must disclose a DPI at Council meetings where the interest is not entered in the Register: Section 31(2);
- (8) A member must notify the MO of a DPI before the end of 28 days beginning with the date of disclosure at a Council meeting, if the interest is not entered in the Register and is not the subject of a pending notification: Section 31(3);
- (9) A member must not take part in the discussion or vote at a Council meeting on matters in which he/she has a DPI: Section 31(4);
- (10) A member must notify the MO of a DPI before the end of 28 days beginning with the date he/she becomes aware that he/she has

such an interest in a matter to be dealt with, or being dealt with, by him/her acting alone in the course of discharging a public function: Section 31(7);

(11) A member must not knowingly or recklessly provide false or misleading information in any of the disclosures or notifications under Sections 30(1), 31(2), 31(3) or 31(7);

(12) Where a member who is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority, has a DPI in any matter to be considered or being considered at the meeting, and is aware of this:

(a) she/he must disclose the interest to the meeting (if the interest is not registered in the authority's register);

(b) she/he may not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting (subject to the dispensation provisions at Section 33) (Section 31(1), (2) and (4));



- (13) In addition, Standing Orders of a relevant authority may provide for the exclusion of a member of the authority from a meeting while any discussion or vote takes place in which the member may not participate (Section 31(10)); and
- (14) A person commits an offence if, without reasonable excuse the person (a) fails to comply with an obligation imposed on the person by Section 30(1) or 31(2) ..., (b) participates in any discussion or vote in contravention of Section 31(4) (Section 34(1)).

19. *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* (2012/1464) (“the DPI Regulations”) describe the pecuniary interests for the purposes of Section 30(3) of LA 2011. The description is of a “subject” (e.g. land); and then sets out a “prescribed description” (e.g. “Any beneficial interest in land which is within the area of the relevant authority”).

20. An authority may, of course, pursuant to Section 111(1) of the Local Government Act 1972, do whatever is calculated to facilitate, or is conducive or incidental to, the discharge of its duties and powers under LA 2011.

21. LA 2011 does not prescribe the process by which allegations are to be investigated, nor the process for making decisions on allegations, save for a requirement that “Arrangements” put in place for making decisions on allegations must include provision for the appointment of at least one “independent person”.

22. Moreover Section 28(6)(a) and (b) of LA 2011 imposes a two-part duty on an authority to have in place “arrangements under which allegations can be investigated” as well as “arrangements under which decisions on allegations can be made”. Section 28(6)(a) concerns investigatory arrangements and Section 28(6)(b) concerns the subsequent decision making arrangements. The Corporation duly has such Arrangements.

### THE DPI

23. The Member had a key DPI in the Delegation Decision with respect to which she participated. This is because:-

- (1) She undoubtedly has a DPI in the decision to determine the Planning Application in relation to the land adjacent to the block of flats in which she lives;

- (2) The “matter” in which she has this DPI is the Planning Application for the Site;
- (3) Any PTC decision which materially affects how the Planning Application is dealt with is within Section 31 of LA 2011;
- (4) That includes the Delegation Decision;
- (5) Therefore the DPI should have been registered not only but also disclosed at the PTC Meeting; and
- (6) Absent a dispensation, pursuant to Section 33 of LA 2011, she should not have participated.

24. By participating, she was in breach of:-

- (1) Section 31 of LA 2011; and
- (2) The Code, paragraph 13 of which states that, absent a dispensation, a member may not participate in any discussion of, or vote on, or discharge any function relating to any matter in which the member has a DPI.

25. The delegation of the Planning Decision to Islington has a material effect on by whom and how the Planning Application is dealt with. It is not a mere demarcation matter.

26. Nor can participation be justified by urgency. There is no basis for that.

#### THE MEMBER'S REACTION

27. The Member has written to the MO by letters dated 14 and 20 February 2018. She argues that:-

- (1) She had no DPI in the Delegation Decision: that is wrong, because she did have a DPI in the Delegation Decision;
- (2) She was justified by the possibility that she might have a dispensation for later decisions: that is immaterial, because she did not have a dispensation for the Delegation Decision;
- (3) The matter was a “merely inter-authority jurisdictional matter”: that also is wrong, because it was more than that.

ADVICE

28. I agree with the MO's letters to the Members dated 12 and 16 February 2018.

29. In my opinion:-

- (1) There is a prima facie breach of Section 31 of LA 2011 and paragraph 13 of the Code;
- (2) This should be further investigated, in the public interest, in accordance with the Corporation's statutory Arrangements and LA 2011;
- (3) The ultimate determination will be for the SC (or a Sub-Committee of the SC);
- (4) If a breach is established, an offence is likely to have been committed under Section 34 of LA 2011;
- (5) No lawful excuse appears to exist;
- (6) No breach of the rules of fairness/natural justice has occurred in relation to the process thus far;

- (7) Even if there had been, that does not mean that the investigation should not go forward: see Hussain above, especially at paragraphs 254-262 inclusive;
- (8) There is no basis for believing that there will be any unfairness on the part of the decision-maker, the SC, if and when matters proceed to that stage.

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**JAMES GOUDIE QC**  
26 February 2018

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**DISCLOSABLE PECUNIARY INTEREST**  
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OPINION

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SG  
26/02/18

Michael Cogher  
Comptroller & City Solicitor  
City of London Corporation