CITY OF LONDON CORPORATION

RE: DISCLOSABLE PECUNIARY INTEREST

MS. SUSAN PEARSON

OPINION

1. I am instructed to advise Ms. Pearson.

2. By communication dated 15 March 2018 the Monitoring Officer ("*MO*") of the City of London Corporation ("*the Corporation*") wrote to Ms. Pearson informing her that the Assessment Sub-committee of the Corporation's Standards Committee had resolved unanimously to commission an investigation. In relevant part this read:

> *"The allegation that at the Planning and Transportation Committee on 29 January 2018 you spoke and voted on Item 21, Richard Cloudesley School Site ("the Site"), despite having a disclosable pecuniary interest in the matter contrary to Paragraph 13 of the Code of Conduct.*
>
> *In reaching its decision the Sub-committee took into account the views of the Independent Person, Neil Asten, who supported the decision.*
>
> *The Sub-committee were of the view, having considered all your submissions and the advice of leading counsel, that the matter in which you had an interest was the planning application for the Site and that any decision which has a material effect on that application is covered by the restrictions contained in section 31 of the Localism Act 2011 and paragraph 13 of the Code of Conduct. The Sub-committee considered that the decision whether or not to recommend the delegation of the decision to the Court of Common Council had a material effect on by whom and how the Planning Application is dealt with.*
>
> *The Sub-committee emphasised that its decision relates to the Code of Conduct only.*

> *A formal investigation will now take place followed by a hearing of the Hearing Sub-committee which will be arranged in due course, and which will determine the matter."*

3. I have had the benefit of reading the Opinion of Mr. James Goudie Q.C. For the reasons more fully set out below, I believe that Ms. Pearson had no disclosable pecuniary interest so no question of conduct contrary to Paragraph 13 of the Code of Conduct and sections 31 and 34 arises. I respectfully take issue with the conclusions reached by Mr. James Goudie Q.C. and on which the Assessment Sub-committee relied.

4. Paragraph 13 of the Code of Conduct ("*paragraph 13*") states:

> *"Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State."*

5. I believe it to be common ground that Paragraph 13 reflects Section 31 of the Localism Act 2011 ("*the 2011 Act*"). The regulations in question are The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (No. 1464) ("*the Regulations*").

6. The report of the Chief Planning Officer and Development Director which fell for consideration at the meeting of the Planning and Transportation Committee held on 29 January 2018 concerned a planning application for the redevelopment of the Richard Cloudesley School Site for education and social housing purposes submitted by the Corporation in July 2017. This stated that a small part of the site lies within the administrative boundary of the City of London Corporation and the majority of the site lies within the administrative boundary of the London Borough of Islington. It was thus a "*cross-boundary application*" and the applicant would be required to submit an

identical application to both Local Planning Authorities. The Chief Planning Officer's recommendation to the committee contained in the report was that it should request Court of Common Council to delegate the Planning and Transportation Committee's function of deciding the planning application to the London Borough of Islington subject to Islington's agreement and the execution of any necessary agreement to give effect to the delegation.

7. This Opinion is not concerned with the merits of this recommendation. It is sufficient to note that the recommendation was defeated by 11 votes to 9. Ms. Pearson spoke against the recommendation and voted with the majority. This led to a letter to Ms. Pearson from the MO, dated 12 February 2018, stating that her participation and voting on 29 January 2018 may have been a breach of the Members' Code of Conduct and she may also have committed an offence under Section 34 of the Localism Act 2011 ("*the 2011 Act*"). It stated that a breach of the Code of Conduct can only be investigated if authorised by the Assessment Sub-committee of the Standards Committee which, as stated above, has since taken place. The letter concluded with what amounted to a caution, given the prospect that a criminal offence may have been committed.

8. This Opinion is also not concerned with whether the MO acted appropriately, or whether he had a discretion not to proceed. If relevant, these are matters which can be taken up later.

9. From the correspondence between the parties I can discern no difference in the description of the facts between the parties. Ms. Pearson has a "*disclosable pecuniary interest*" for the purposes of Chapter 7 of Part 1 of the 2011 Act and the Regulations by virtue of having a "*beneficial interest in land which is within the*

area of the relevant authority". The "*land*" concerned is a flat which she owns at 21 Hatfield House, Golden Lane Estate. My understanding is that the Golden Lane Estate adjoins the Richard Cloudesley School Site. It is also common ground that, to the extent that any future decision in relation to the grant of planning permission is made by the Planning and Transportation Committee, Ms. Pearson would have a disclosable pecuniary interest for the purposes of the 2011 Act and would require a dispensation to speak under Section 33 of the 2011 Act. In fact, a dispensation to speak but not vote was notified to her on 15 March 2018. I am instructed that this dispensation was granted by reference to section 33(2)(c), that is, her speaking was in the interests of persons living in the authority's area.

10. Importantly, the MO's communications of 15 March 2018 informing her of the investigation made no finding or allegation that Ms Pearson had any pecuniary interest in the outcome of the decision in question, namely, the delegation or otherwise of the planning application. Indeed, the MO in both his instructions to Mr James Goudie Q.C. and his report at paragraph 11 to the Assessment Sub-committee refers expressly to "*...the fact that there is no pecuniary impact arising*" from this delegation. That delegation at agenda item 21 was the sole "*matter to be considered, or being considered, at the meeting...*" (quoting section 31(1)(b)) of the 2011 Act.) This is in contrast to the eventual consideration of the planning application itself. Ms Pearson of course acknowledges a disclosable pecuniary interest in that matter.

11. Therefore, any finding that paragraph 13 and section 31 of the 2011 Act had been infringed must depend upon a legal interpretation of "*disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting*"" as embracing speaking and voting in a situation where there is (a) no actual or potential pecuniary interest arising from the decision actually made at that

meeting in respect of the matter under consideration and (b) the matter under consideration at the meeting, in which she spoke and voted, was something other than the resolution of the planning application.

12. In my opinion, this is a hopeless interpretation. Quite apart from the violence it offers to the language of the 2011 Act and its irrelevance to the mischief the 2011 Act is intended to address, as the MO's report makes clear in describing the powers open to the Corporation if the allegations are upheld, the consequences to Ms Pearson are very serious indeed and may lead to criminal prosecution, a possibility confirmed by the MO in administering a caution to her. These consequences strongly suggest that the 2011 Act and paragraph 13 should be interpreted more strictly and with care.

13. Turning to the Corporation's case as represented by the reasoning in the communication of 15 March 2018, there is a fundamental confusion. It cannot be denied that the decision as to which authority should determine a planning matter is an important decision regarding the handling of any application. But so are many decisions, for example, if the decision had to be delayed, or postponed to another day. The question to be answered is whether Ms Pearson's participation in such decisions gave rise to a disclosable pecuniary interest. Chapter 7 of the 2011 Act has as its purpose the promotion and maintenance of high standards of conduct by members and a prohibition of any member securing personal gain from any decision in which the member participated. Ms Pearson's participation and vote on which authority was best fitted to assess the application, on a matter which the Corporation has subsequently granted her rights to speak on the substantive issue, does not offend that purpose.

14. The Corporation's reasoning proceeds as follows. Ms Pearson's interest was in the planning application for the site and that *any* decision which had a material effect on that application is covered by restrictions contained in section 31 of the 2011 Act and paragraph 13. The delegation recommendation was a decision which had *"...a material effect on by whom and how the Planning Application is dealt with."* This is literally true but, in my view, it is wholly insufficient to found the existence of a disclosable pecuniary interest. To repeat, the Corporation accepts that there was no pecuniary interest arising from the delegation, which was the "*matter*" under consideration "*at the meeting*". No further reasoning is offered. I turn now to the Opinion of Mr James Goudie Q.C.

15. First, "*Disclosable pecuniary interests*" are described in the Schedule to the Regulations. Ms Pearson's interest is plainly under "*Land*", namely, her flat. Any "*matter*" which affected the value or benefit of this flat would fall within the scope of a disclosable pecuniary interest. The definition of "*land*" in the regulations emphasises the requirement for occupation or income, that is, "*land*" absent a pecuniary element, in cash or kind, is excluded from the Schedule.

16. Mr Goudie Q.C. sets out his reasoning at paragraph 23. In this he starts at paragraph 23(1) by stating that Ms Pearson has a disclosable pecuniary interest in the "*decision to determine the Planning Application*". It is accepted that she has a disclosable pecuniary interest in the *outcome* which, but for dispensation, would preclude her participation in making that decision. If, however Mr Goudie Q.C. means that she had a disclosable pecuniary interest in *how* the application should be determined, especially which body was to determine the application, this is an assumption rather than a statement of law and would appear to be contrary to his instructions. It is

not in dispute that Ms Pearson had no disclosable pecuniary interest in which body makes the planning decision.

17. At (2) he proceeds to define the "*matter*" as the planning application for the site. Again, this is an assumption or assertion. In fact, the only "*matter*" under consideration "*at the meeting*" (to track the statutory language) was delegation of the planning application not the planning application itself. For this argument to prevail, "*matter*" must be defined to extend to include every aspect of the planning application irrespective of the lack of any discrete pecuniary advantage arising from any decision and irrespective of whether or not the substance of the planning application was under consideration at the meeting in question.

18. In my respectful submission, that is too broad and artificial a construction. It would embrace inconsequential decisions for as long as they related, however indirectly, to the planning application. Perhaps in anticipation, at (3), Mr Goudie Q.C. refers to a *"decision which materially affects how the planning application is dealt with..."*. (My emphasis). It is not clear whence the materiality threshold derives; nor is it clear whether the disclosable pecuniary interest arises if the decision is "*material*" to the process or to the ultimate result. The addition of the materiality condition is revealing because it indicates recognition that the chosen interpretation has absurd consequences which "*materiality*" seeks to address. In my view, the interpretation is not rescued from error by reading something into the 2011 Act which is not there.

19. In summary, the Corporation's argument rests upon the following basis: that as Ms Pearson owns an adjacent flat, she has a disclosable pecuniary interest in "*Land*" and is therefore disabled from participating in *any* matter at *any*

meeting relating to the process leading to the planning decision of adjacent property notwithstanding the irrelevance of such decision or decisions to the registered disclosable pecuniary interest and the absence of any pecuniary advantage arising from such decision or decisions. This is modified by an extra-statutory materiality threshold, of unknown provenance, in that the decisions must materially affect the manner in which the application is dealt with, as opposed to the decision itself, again in the complete absence of any pecuniary effect on Ms Pearson or anyone else.

20. As stated above, this interpretation runs flat contrary to the language of section 31 which points to any "*matters*" specifically under consideration at a specific meeting. It is illegitimate to project forward to the planning decision and hold that all process decisions leading to the final decision are matters falling within section 31 in the total absence of any pecuniary effect whatever. This goes well beyond the avowed intention of Chapter 7 of the 2011 Act. In the absence of any pecuniary interest and given the severe consequences to which Ms Pearson is exposed, this is disproportionate and further leans against such an expansive interpretation.

21. There are two final points on which I have not been asked to advise but will nevertheless comment upon. First, section 31(1)(c) provides that the prohibition on participation will only apply if the member is aware of possessing a disclosable pecuniary interest. This suggests an element of intention or perhaps recklessness in proceeding to participate aware of such knowledge. The burden is on the Corporation to show awareness. As the existence or otherwise of a disclosable pecuniary interest in the factual situation which obtains here is a matter on which different views are held, in good faith, I am unclear that the Corporation has discharged its burden of demonstrating Ms Pearson's awareness. Her repeated case is that she denies

she has a disclosable pecuniary interest. The point is not dealt with in the MO's report to the Assessment Sub-committee or in Mr Goudie Q.C.'s Opinion (presumably because he was not asked to advise upon it) but it is of some importance as all the conditions of section 31 have to be satisfied and section 31(1)(c) has not been considered at all. Failing this, the process collapses. I do not see this as simply a matter of "*ignorance of the law*" non excusat.

22. Secondly, the report to the Planning and Transportation Committee refers to "*Reasons for Urgency*". I am instructed that the delegation item was added to the agenda after 4pm on the Friday before the Monday 10 am meeting. I am further instructed that in the Committee discussion it was stated that the planning application had been made five months before and that the possibility of a delegation to Islington had existed since then. It seems that the question of delegation could have been brought to the Committee at any time in the interim period. The Corporation's legal adviser is reported to have replied that it was unclear what Islington's attitude to the proposed delegation would be and whether they would accept the delegation. It seems that Islington had only clarified its position on 25 January 2018 that it would be "*prepared to consider*" the delegation, but had not committed to do so. Consideration of the planning application by Islington would take place on 1 March 2018. In other words, the position was much the same as it had been for the previous five months. This brings into question the wisdom of treating this as an urgent matter and adding it, as 21st item on the agenda, with just a weekend's notice, in the knowledge that it was likely to be contentious, as indeed it proved to be.

23. The significance of this short notice is that, assuming that Ms Pearson did indeed possess a disclosable pecuniary interest and was aware of this, but

nevertheless had something useful to contribute on behalf of the citizens of her ward (as the Corporation subsequently affirmed by its grant of dispensation in relation to the planning discussion) the Corporation's actions in classifying the matter as "*urgent*" when it does not seem to have been urgent had the effect of disabling her from seeking any dispensation. In this connection, I am puzzled by the MO's report to the Assessment Sub-committee which describes reasons for the delegation which formed no part of the Chief Planning Officer's recommendation and which were not disclosed to members in the report at agenda item 21 or, I am instructed, orally in the meeting. One of the undisclosed reasons was that there "*... was some local opposition (largely from City residents nearby)*" to the planning application which, it seems, was a justification for delegating the matter to Islington. At this stage, I can merely register some surprise at the Corporation's conduct.

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