

Committee: Dispensations Sub (Standards) Committee	Date: 1 February 2019
Subject: Requests for a Dispensation under the Localism Act 2011	Public
Report of: Report of Town Clerk	For Decision
Report author: Gemma Stokley	

Summary

A Member has requested a dispensation to speak as a member of the public on a specified matter where they would otherwise have a disclosable pecuniary interest by virtue of their beneficial interest in land within the City.

Recommendation

Your Committee is asked to determine the applications 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. The Standards Committee will be considering a draft policy on the granting of dispensations on 25 January 2019. If that policy is approved then this application should be determined in accordance with the provisions of that document. Pending the adoption of that policy, this report has been prepared in accordance with the existing template.

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 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 and the relevant application form is appended. This report does not seek to duplicate the information that is contained in the application forms, however, where there is additional relevant information this is set out below.

Ann Holmes

10. Ann Holmes is a Common Councilman for the Ward of Farringdon Within and a Member of a number of committees including the Education Board, the Board of Governors of the City of London School for Girls and the Standards Committee where she currently serves as Deputy Chairman. The request submitted is to speak, as a member of the public, on a premises licence for 'Half Cup' at 22 Bartholomew Close at a Licensing Hearing scheduled to take place on 4 February 2019. The full application can be seen at Appendix 2.

11. Ms Holmes has registered a disclosable pecuniary interest as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 in that she is the joint leaseholder of a flat at 43, Bartholomew Close, which is on the possible exit route from the 'Half Cup'.

12. In September 2018, Ms Holmes applied for and was granted a dispensation to speak as a member of the public on a licensing proposal for 60 Bartholomew Close being considered at the Licensing (Hearing) Sub Committee on 2 October 2018. This request was approved under urgency by the Town Clerk in consultation with the Chairman and immediate past Chairman of the Standards Committee.

13. A Licensing Hearing Panel is made up of three members drawn from the main Licensing Committee. One member must be an appointed Sub Committee Chairman (appointed at the Licensing Committee after the April/May Court each year). All Chairmen of Sub Committees need to have undertaken the BIIAB training and no member can sit on a panel if the premises in question sits in their ward.

14. When premises licence holders wish to make any changes to their licence they are required to place a 'blue' notice on their property and in the local press. Once their application has been submitted, the Licensing Team also display it on the City Corporation's public website. There is a consultation period in which any person may make a representation (i.e.

an objection) to a new licence or a variation to the premises licence. Once a valid representation has been received either directly to Town Clerk's Department or the Licensing team – a hearing is then required.

15. The hearing must be held within 20 working days after the last date for representations. 10 working days' notice of the Hearing must be provided to all parties. Papers must be circulated 5 working days prior to the Hearing.

Conclusion

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

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