

<b>Committee:</b> Standards Committee	<b>Date:</b> 26 January 2018
<b>Subject:</b> Request for a Dispensation under the Localism Act 2011	<b>Public</b>
<b>Report of:</b> Comptroller & City Solicitor  <b>Report author:</b> Edward Wood, Chief Solicitor	<b>For Decision</b>

### **Summary**

A Member requests a dispensation to speak on planning and licensing matters where she would otherwise have a disclosable pecuniary interest by virtue of her ownership of a flat within her Ward.

### **Recommendation**

Members are asked to determine the application for a dispensation.

### **Main Report**

#### **Background**

1. Ann Holmes, a Common Councilman for the Ward of Farringdon Within, has submitted a request for a dispensation. Your 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 and The Relevant Local Authorities (Disclosable Pecuniary Interests) Regulations 2012 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 interest that is engaged in this case is:
  - (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 commits a criminal offence if, without reasonable excuse, they participate in any discussion or vote on any 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 your 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. The request for a dispensation is attached at Appendix 1. Ann Holmes is requesting a dispensation to speak (but not vote) on planning and licensing matters where she would otherwise have a disclosable pecuniary interest by virtue of her joint ownership of a flat within her Ward. As justification she cites the ability to represent her constituents by speaking on their behalf at the Planning & Transportation Committee and Licensing (Hearing) Sub-Committee. A dispensation is sought until the Ward elections in 2021.
10. On 23 September 2014 your Dispensations Sub-Committee granted Ann Holmes a dispensation to speak at meetings of the Planning & Transportation Committee concerning planning developments within her Ward, in accordance with the Planning Protocol and the rules of the Planning & Transportation Committee. The minutes recording the reasoning of the Sub-Committee on that occasion are included for information at Appendix 2. That dispensation was in force until the Ward elections in 2017.
11. At the time of writing this report Ann Holmes is not a Member of the Planning & Transportation Committee or the Licensing Committee. The Planning Protocol and the Licensing Protocol can be viewed on the City Corporation website and copies will also be available at the meeting if requested.

### **Conclusion**

12. The request for a dispensation is similar to a request that was granted to the Member concerned during the previous electoral cycle. Nevertheless your Committee is asked to determine this new application afresh in accordance with the criteria set out under the Localism Act 2011.

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