

Committee: Standards Committee	Date: 18 May 2018
Subject: Requests for a Dispensation under the Localism Act 2011	Public
Report of: Joint Report of Town Clerk and Comptroller & City Solicitor	For Decision
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Summary

Three Members have requested a dispensation to speak and/or vote on specified matters where they would otherwise have a disclosable pecuniary interest by virtue of their ownership of property within the City.

Recommendation

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

Main Report

Background

1. Three Members have submitted requests 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, 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 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 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 applications and specific considerations

9. The requests for dispensations that have been received are listed below and the relevant application forms are appended. This report does not seek to duplicate the information that is contained in those application forms. However, where there is additional relevant information this is set out below.

Appendix 1 – Mark Bostock

10. A request for a dispensation from Mark Bostock is attached at Appendix 1. He is a Common Councilman for the Ward of Cripplegate and a Member of the Barbican Residential Committee. The part of the request that needs to be determined by your Committee is the application to speak and vote at a specific meeting of the Barbican Residential Committee on 4 June 2018.
11. This is because a partial dispensation to speak only on planning application 17/00909/FULL (Ben Jonson, Breton, Thomas More, Benyon and Willoughby Houses, Barbican residential car park) at the Planning and Transportation Committee on 9 April 2018 was previously granted by the Town Clerk under Standing Order No. 41(a) urgency arrangements as reported elsewhere on this agenda. The request to vote on that matter was refused.
12. Mark Bostock was partially granted a dispensation by the Dispensations Sub (Standards) Committee in March 2018 to speak only on Barbican car park charges at the Barbican Residential Committee on 19 March 2018. The request to vote on that matter, and to speak and vote on that matter at subsequent meetings until the ward elections in 2021, was refused.

Appendix 2 – Deputy John Tomlinson

13. A request for a dispensation from Deputy John Tomlinson is attached at Appendix 2. He is also a Common Councilman for the Ward of Cripplegate and a Member of the Barbican Residential Committee. For the avoidance of doubt Deputy John Tomlinson is seeking a dispensation until the ward elections in 2021.
14. Deputy Tomlinson was refused a dispensation by the Standards Committee on 19 May 2017 because they felt that further information was required and that the application was too wide reaching by requesting to speak and/or vote on any matter at the Barbican Residential Committee and the Community & Children's Services Committee.

15. Subsequently, Deputy Tomlinson was partially granted a dispensation by the Dispensations Sub (Standards) Committee in March 2018 to speak only at Barbican Residential Committee on 19 March 2018 on (i) concrete repairs, (ii) lease enforcement and (iii) any discussion which may arise on a possible review of the current composition and terms of reference of the Barbican Residential Committee. The request to vote on these matters was refused.

Appendix 3 – Deputy David Bradshaw

16. A request for a dispensation from Deputy David Bradshaw is attached at Appendix 2. He is also a Common Councilman for the Ward of Cripplegate and a Member of the Barbican Residential Committee. For the avoidance of doubt Deputy David Bradshaw is seeking a dispensation until the ward elections in 2021.
17. Deputy Bradshaw was refused a dispensation by the Standards Committee on 19 May 2017 because they felt that further information was required and that the application was too wide reaching by requesting to speak and/or vote on any matter impacting on either Barbican or Golden Lane residents.
18. Subsequently, Deputy Bradshaw was granted a dispensation by the Town Clerk under Standing Order No. 41(a) urgency arrangements in June 2017 to speak on car parking charging at the meeting of the Barbican Residential Committee on 5th June 2017; and a partial dispensation by the Dispensations Sub (Standards) Committee in March 2018 to speak only at Barbican Residential Committee on 19 March 2018 on (i) concrete repairs to the Barbican Estate, (ii) lease enforcement dealing with breaches and (iii) the annual rent review. The request to vote on (iii) above was refused.

Conclusion

19. Your Committee is asked to determine these applications in accordance with the criteria set out under the Localism Act 2011.

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