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| Committee: Standards Committee | Date: 26 January 2018 |
| Subject: Potential Conflicts of Interest on the Barbican Residential Committee | Public |
| Report of: Comptroller & City Solicitor | For Decision |
| Report author: Edward Wood, Chief Solicitor | |

Summary

Your Committee requested a report on potential conflicts of interest for Members who serve on the Barbican Residential Committee and who have an interest in property on the Barbican Estate. This report covers the constitutional arrangements of the Barbican Residential Committee, the position in relation to disclosable pecuniary interests under the Localism Act 2011, the granting of dispensations and the history of declarations and attendance at meetings of the Barbican Residential Committee.

It should be noted that on 14 December 2017, the Policy & Resources Committee asked for the governance of the City Corporation's residential housing to be examined on a more strategic level with the aim of producing proposals which consolidate the governance arrangements of the City Corporation's residential housing offer.

Recommendation:

Members are asked to:

- a) note that the Policy & Resources Committee have asked for the governance of the City Corporation's residential housing to be examined on a more strategic level with the aim of producing proposals which consolidate the governance arrangements of the City Corporation's residential housing offer: and
- b) consider whether, in light of the Policy & Resources Committee's review referred to above, it is appropriate to make a recommendation to that Committee regarding any future composition of the Barbican Residential Committee.

Main Report

Background

1. At the last regular meeting of this Committee on 6 October 2017, Members requested that the Comptroller & City Solicitor produce a report on the Barbican Residential Committee and the potential for conflicts of interest arising in relation to Members who serve on that Committee and who have an interest in property on the Barbican Estate. Members also requested that the Chairman of the Policy and Resources Committee be advised of this, as the Policy and Resources Committee had separately requested a review of the housing services by the Director of Community & Children's Services, including the governance arrangements.
2. Subsequently, on 14 December 2017, the Policy & Resources Committee asked for the governance of the City Corporation's residential housing to be examined on a more strategic level with the aim of producing proposals which consolidate the governance arrangements of the City Corporation's residential housing offer. This review is now being co-ordinated by the Town Clerk.

Constitutional arrangements

3. The Barbican Residential Committee is a non-ward committee appointed by the Court of Common Council. It was first established in the early 1980's and its current constitution and terms of reference are attached at Appendix 1.
4. The Barbican Residential Committee is responsible for the management of all completed residential premises and ancillary accommodation on the Barbican Estate, as well as the disposal of interests in the Barbican Estate.
5. The Barbican Residential Committee acts on behalf of the City Corporation as landlord of the Barbican Estate, and is not to be confused with the Barbican Estate Residents' Consultation Committee, which is an independent body which exists to represent the views of the Barbican Estate residents. In carrying out its management functions, the Barbican Residential Committee must have regard to any representations made to it by the Barbican Estate Residents' Consultation Committee.
6. Potential conflicts of interest are essentially 'hard wired' into the Barbican Residential Committee itself by the fact that nine Members of that Committee are nominated by the residential wards encompassing the Barbican Estate, being Aldersgate, Cripplegate Within and Cripplegate Without. Presumably this arrangement was put in place to ensure that

the views of residents were fully represented on the Barbican Residential Committee, as well as via the Barbican Estate Residents' Consultation Committee. I understand that as a matter of practice the Members nominated by the wards of Aldersgate, Cripplegate Within and Cripplegate Without are always residents of the Barbican Estate (referred to as "resident Members" in this report).

7. However, the Court of Common Council has attempted to offset any concerns over potential conflicts of interests by itself electing a further eleven Members of the Barbican Residential Committee who are non-residents of the Barbican Estate (referred to as "non-resident Members" in this report). Even when the one ex-officio position to the Chairman or Deputy Chairman of the Community & Children's Services Committee is taken into account, this ensures that a majority of the Members of the Barbican Residential Committee should be non-residents of the Barbican Estate.
8. This does of course only protect the City Corporation's position if the non-resident vacancies are filled and those Members attend meetings in sufficient numbers. At the time of writing there are five vacancies for non-resident Members of the Barbican Residential Committee. Recent attendance at meetings is considered later on in this report.
9. Further safeguards include the fact that the Chairman and Deputy Chairman of the Barbican Residential Committee shall be elected from the Members who are non-residents of the Barbican Estate, and that the quorum consists of any four Members who are non-residents of the Barbican Estate.
10. It may be worth noting that non-resident Members from the wards of Aldersgate, Cripplegate Within and Cripplegate Without can also be elected to fill the quota of non-resident Members of the Barbican Residential Committee, stand for the Chairmanship and Deputy Chairmanship and count towards the quorum. Currently therefore eleven out of the fifteen Members of the Barbican Residential Committee represent Aldersgate or Cripplegate. However, this is of course within the gift of the Court of Common Council.

Position under the Localism Act 2011

11. Members will know that 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 primarily engaged in relation to housing matters is:

- (a) any beneficial interest in land which is within the area of the relevant authority.
- 12. 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.
- 13. 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. It is a moot point for example whether a Member of the Barbican Residential Committee who owned a flat on the Barbican Estate, but did not own a car, would have a disclosable pecuniary interest in the setting of resident car parking charges. Whilst the Member concerned would not be liable to pay any parking charge at that time, their circumstances could change in the future, and the level of such a charge could conceivably also have an impact on the saleability and value of the Member's flat.
- 14. 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).
- 15. Members will also know however that 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. 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.

Comparison with previous regime

16. The previous standards regime under the Local Government Act 2000 expressly allowed Members to vote on a number of matters in which they would otherwise have had a 'prejudicial interest' (the equivalent of a disclosable pecuniary interest). In the context of a beneficial interest in land in an authority's area, this included business relating to the functions of the authority in respect of:-
 - (a) housing, where the Member was a tenant of the authority, provided that those functions did not relate particularly to their tenancy or lease.
17. Therefore, under the previous standards regime, Members of the Barbican Residential Committee who had an interest in property on the Barbican Estate were automatically allowed to speak and vote on all matters relating to the management of the Barbican Estate that did not relate to their tenancy or lease in particular.

Dispensations granted under the Localism Act 2011

18. Your Committee will recall that you most recently considered a number of requests for dispensations from Members of the Barbican Residential Committee at your meeting on 19 May 2017. The requests were largely prompted by an upcoming report relating to the charging policy for car parking and stores on the Barbican Estate. In that case, where sufficient information had been provided, your Committee granted dispensations to speak on those specific matters but not to vote.

Declarations made under the Code of Conduct

19. Inspection of the minutes of the Barbican Residential Committee for the last two years reveals that the following disclosable pecuniary interests were declared:

| Date of meeting | Item of business | Number |
|-----------------|---|--------|
| 11/12/2017 | Lease enforcement | 5 |
| 11/09/2017 | No declarations – meeting inquorate | - |
| 05/06/2017 | Charging policy for car parking | 3 |
| 13/02/2017 | Rent review | 2 |
| 12/12/2016 | Charging policy for car parking and storage | 5 |
| 19/09/2016 | No declarations | - |
| 13/06/2016 | No declarations | - |
| 14/03/2016 | Service based review | 1 |
| 14/03/2016 | Car park charging | 2 |
| 14/03/2016 | Rent review | 2 |

Attendance at meetings of the Barbican Residential Committee

20. Inspection of the minutes of the Barbican Residential Committee for the last two years indicates the following level of attendance by resident and non-resident Members:

| Date of meeting | Resident Members | Non-resident Members |
|-----------------|------------------|----------------------|
| 11/12/2017 | 7 | 6 |
| 11/09/2017 | - | - |
| 05/06/2017 | 9 | 6 |
| 13/02/2017 | 7 | 9 |
| 12/12/2016 | 6 | 7 |
| 19/09/2016 | 7 | 9 |
| 13/06/2016 | 7 | 7 |
| 14/03/2016 | 8 | 10 |

21. Your Committee will note that at the two most recent quorate meetings of the Barbican Residential Committee the resident Members were in the majority.

Assessment of legal position

22. There is no doubt that the current arrangements are lawful. The Barbican Residential Committee is covered by the rules on disclosable pecuniary interests in the Localism Act 2011 and The Relevant Local Authorities (Disclosable Pecuniary Interests) Regulations 2012. Members of the Barbican Residential Committee can deal with any disclosable pecuniary interests that arise by not participating in the

discussion and vote on that item, or by seeking an appropriate dispensation from your Committee.

Other considerations

23. Members may wish to consider whether the constitutional arrangements of the Barbican Residential Committee might give rise to a public perception that conflicts of interest could occur. Members may also wish to consider whether any aspect of the current arrangements constitutes an impediment to the proper consideration of business at meetings of the Barbican Residential Committee.

Conclusion

24. The current constitutional arrangements of the Barbican Residential Committee are lawful. However, Members may wish to consider whether the current arrangements might give rise to a negative public perception that conflicts of interest could occur. Members may also wish to consider whether any aspect of the current arrangements could be improved upon.

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