

# TONBRIDGE & MALLING BOROUGH COUNCIL



## EXECUTIVE SERVICES

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### Chief Executive

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**NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.**

Contact: Committee Services  
[committee.services@tmbc.co.uk](mailto:committee.services@tmbc.co.uk)

11 June 2019

To: MEMBERS OF THE GENERAL PURPOSES COMMITTEE  
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the General Purposes Committee to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Wednesday, 19th June, 2019 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

## A G E N D A

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**Matters for Recommendation to the Council**

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*The Human Resources Strategy (HR Strategy) provides an overview of the Council's approach to managing its employees. It is updated annually to identify "improvement priorities", such as changes to the Council's personnel policies.*

**Decisions to be taken under Delegated Powers**

5. Dispensation - Councillor Mark Davis 27 - 34

*To consider a request for a dispensation under section 33 of the Localism Act 2011 to enable Councillor Mark Davis to continue to participate in meetings of the Area 1 Planning Committee, the Planning and Transportation Advisory Board and other meetings where the Local Plan is under consideration.*

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6. Urgent Items 35 - 36

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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7. Exclusion of Press and Public 37 - 38

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**PART 2 - PRIVATE**

**Decisions to be taken under Delegated Powers**

8. Establishment Changes 39 - 52

LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual

*The report sets out for Members' approval a number of establishment changes recommended by Management Team.*

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

## **MEMBERSHIP**

Cllr Mrs F A Kemp (Chairman)  
Cllr L J O'Toole (Vice-Chairman)

Cllr Mrs P A Bates  
Cllr Mrs S Bell  
Cllr M D Boughton  
Cllr M A Coffin  
Cllr D J Cooper  
Cllr D A S Davis

Cllr M A J Hood  
Cllr K King  
Cllr B J Luker  
Cllr W E Palmer  
Cllr N G Stapleton  
Cllr Mrs M Tatton

Apologies for absence

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Declarations of interest

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## TONBRIDGE AND MALLING BOROUGH COUNCIL

### GENERAL PURPOSES COMMITTEE

Monday, 28th January, 2019

**Present:** Cllr O C Baldock (Chairman), Cllr M A C Balfour, Cllr M A Coffin, Cllr N J Heslop, Cllr B J Luker and Cllr C P Smith

Councillors Mrs J A Anderson, D J Cure and M R Rhodes were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors L J O'Toole (Vice-Chairman), Mrs S Bell, P F Bolt, Mrs M Heslop and R V Roud

### PART 1 - PUBLIC

#### **GP 19/1 DECLARATIONS OF INTEREST**

There were no declarations of interest made in accordance with the Code of Conduct.

#### **GP 19/2 MINUTES**

**RESOLVED:** That the Minutes of the meeting of the General Purposes Committee held on 8 October 2018 be approved as a correct record and signed by the Chairman.

### MATTERS FOR RECOMMENDATION TO THE COUNCIL

#### **GP 19/3 REVIEW OF POLLING DISTRICTS AND POLLING PLACES**

The Chief Executive reported on the Review of Polling Districts and Polling Places and set out the proposals recommended by the Electoral Review Working Group on 14 January 2019.

It was noted that appropriate changes arising from these proposals would be made to the Register with effect from 1 March 2019.

The Chairman indicated that there had been an in-depth discussion at the Electoral Review Working Group and a number of views had been considered.

**RECOMMENDED:** That the final proposals, set out in Annex 1 to the report, be approved by Council.

**\*Referred to Council**

**GP 19/4 LOCALISM ACT PAY POLICY**

The report of the Director of Central Services summarised the requirements of the Localism Act 2011 and presented an updated Pay Policy Statement for 2019/20

Members noted that as there had not been any changes in the Borough Council's remuneration policy, the substantive content of the updated Pay Policy Statement, attached as Annex 1 to the report, was identical to the authority's first Pay Policy Statement adopted by Council on 16 February 2012.

**RECOMMENDED:** That the Pay Policy Statement, attached as Annex 1 to the report, be commended to Council for adoption.

**\*Referred to Council**

**DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PART 3 OF THE CONSTITUTION (RESPONSIBILITY FOR COUNCIL FUNCTIONS)**

**GP 19/5 PAY AWARD 2019**

Members gave consideration to the matter of a pay award for employees for 2019/20. A range of factors that were relevant to the issue of a pay award were considered and included the prevailing economic conditions, comparative pay settlements and the Retail Price Index (RPI).

The Chief Executive reported that provision for pay award inflation for 2019/20 had been made in the Medium Term Financial Strategy. Members recognised that staff were a valuable asset to the organisation and continued to face significant challenges in dealing effectively with the implications of overall costs reduction through re-structuring, shared services, deletion of posts and potential future change.

Members acknowledged the hard work by the staff throughout the year and were grateful for their commitment.

It was also important for recruitment and retention that the Borough Council did not fall behind other local authorities and it was proposed that an award of 2.5% was offered to staff for 2019/20. This was in line with other Kent councils with which the Borough Council competed in the recruitment market.

Members were pleased to note that there had been a good response to a number of recent high profile vacancies.

**RESOLVED:** That a 2.5% pay increase be awarded from 1 April 2019.

**GP 19/6 ANNUAL REVIEW OF WHISTLEBLOWING POLICY**

The report of the Director of Finance and Transformation advised of the outcome of the annual review of the Borough Council's Whistleblowing Policy, which identified that no changes were required at this time. Members were advised that the Audit Committee of 21 January 2019 had also approved the Policy. (Minute Number AU 19/5 refers)

**RESOLVED:** That the Whistleblowing Policy, attached as Annex 1 to the report, be approved.

**MATTERS SUBMITTED FOR INFORMATION****GP 19/7 GENDER PAY GAP REPORT 2017/18**

The report of the Director of Central Services summarised the legislative context for gender pay gap reporting and incorporated the outcomes of the Borough Council's gender pay gap analysis for 2017/18.

Particular reference was made to the disparity in grades 3 to 6 (illustrated in paragraph 1.3.2 of the report) which indicated that women were more likely to apply for, be appointed to and remain in lower graded posts. The Borough Council's gender gap profile suggested that it was the lack of men in lower graded jobs that was the cause of the extent of the gap.

However, Members were reminded that the Borough Council had contracted out several services, such as refuse, street cleansing and leisure centres, where often lower paid jobs were filled in the majority by men, which explained in part why Tonbridge and Malling's pay gap was higher than some comparative councils.

**RESOLVED:** That the report be received and noted.

**MATTERS FOR CONSIDERATION IN PRIVATE****GP 19/8 EXCLUSION OF PRESS AND PUBLIC**

The Chairman moved, it was seconded and

**RESOLVED:** That as public discussion would disclose exempt information, the following matters be considered in private.

**PART 2 - PRIVATE****DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH THE PART 3 OF THE CONSTITUTION (RESPONSIBILITY FOR COUNCIL FUNCTIONS)**

**GP 19/9 ESTABLISHMENT CHANGES****(LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)**

The report of the Management Team set out for approval a number of establishment changes arising from the ongoing operational management of the Borough Council's services.

**RESOLVED:** That the proposals and establishment adjustments set out in the report be endorsed as follows:

- (1) post DB0303 (Customer Services Supervisor, 37 hours per week, scale 4 / 5) be deleted with effect from 1 June 2019;
- (2) post DB0312 and DB0316 (Senior Customer Services Advisor, scale 3 / 4, 37 hours and 24 hours per week) be deleted with effect from 1 June 2019;
- (3) posts DB0317, DB0318, DB0320 and DB0329 (Customer Services Advisor scale 2 / 3, 21.25, 6.50, 11.25 and 17.50 hours per week) be deleted with effect from 1 June 2019;
- (4) three updated posts of Senior Customer Services Advisor, scale 3 / 4 (two at 37 hours per week and one at 22.50 hours per week) be created with effect from 1 June 2019;
- (5) five updated posts of Customer Services Advisor, scale 2 / 3 (one at 37 hours per week, one at 21.25, one at 17.50 and two at 14.50 hours) be created with effect from 1 June 2019;
- (6) the saving of £2,140 arising from the above recommendations, be ring-fenced pending any further adjustments to the staffing resource within the team;
- (7) the 30 hours per week M8 post of Scrutiny and Partnerships Manager (DC0103) be regraded M7 with effect from 1 April 2019;
- (8) the 37 hours per week post of Economic Regeneration Officer (DC0106) be regraded M7 with effect from 1 April 2019;
- (9) the hours attached to the M5 post of Chief Corporate Policy Officer (post DC0101) be reduced from 37 hours to 29.6 hours per week with effect from 1 April 2019;
- (10) in order to reflect the re-designation of post DA0001 from Central Services Director to Central Services Director and Deputy Chief Executive, the post be regraded M2 with effect from 1 February 2019;

- (11) post DN0001 be re-designated Head of IT Services and regraded M4 with immediate effect;
- (12) the full time post DN0210, Technical Support Officer grade SO/M8, be deleted with immediate effect; and
- (13) the saving of £11,637, arising from recommendations 11 and 12, be ring-fenced to resource potential future specialist IT staffing support.

The meeting ended at 8.10 pm

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## TONBRIDGE & MALLING BOROUGH COUNCIL

### GENERAL PURPOSES COMMITTEE

19 June 2019

#### Report of the Director of Central Services

#### Part 1- Public

#### Matters for Recommendation to Council

### 1 HUMAN RESOURCES STRATEGY UPDATE

The Human Resources Strategy (HR Strategy) provides an overview of the Council's approach to managing its employees. It is updated annually to identify "improvement priorities", such as changes to the Council's personnel policies.

The updated Hr Strategy attached as Annex 1 to this report reviews progress in achieving the improvement priorities in the Human Resources Strategy (HR Strategy) for April 2018 – March 2019, and identifies actions to be implemented in the period April 2019 – March 2020. The updated Strategy in Annex 1 also contains the statutory equality monitoring required by the Equality Act 2010.

#### 1.1 Overview of updates to the HR Strategy

1.1.1 Section 3 of the updated HR Strategy lists progress against the improvement priorities identified in 2018/19.

1.1.2 Section 4 of the HR Strategy reports the outcomes of equality monitoring of staffing issues in 2018/19. The Council's Management Team have not discerned evidence of discrimination against any of the protected characteristic groupings listed in the Equality Act 2010.

1.1.3 Section 5 of the HR Strategy advises the Committee of the improvement priorities that have been so far identified for 2019/20. This section is referred to as The Workforce Development Plan (WDP) because periodically various external agencies, government departments etc. request information about the Council's WDP.

#### 1.2 Legal Implications

1.2.1 The reporting of the outcomes of the Council's HR equalities monitoring is a statutory requirement of the Equalities Act 2010.

### **1.3 Financial and Value for Money Considerations**

- 1.3.1 All of the actions listed in Section 5 of the attached Annex will be resourced from existing budgets, and every opportunity will be taken to resource items such as training from relevant workshops that are provided free of charge, or low cost digital platforms such as webinars or e-learning.

### **1.4 Risk Assessment**

- 1.4.1 The Workforce Development Plan in Section 5 of the HR Strategy complies with one of the recommended requirements of the Annual Governance Statement (part of the statement of accounts). It is imperative that the Council can demonstrate that its staff are appropriately qualified and suitably skilled.

### **1.5 Recommendations**

- 1.5.1 The Committee is commended to note the outcomes of the equality monitoring as reported in Section 4 of the HR Strategy and to recommend the actions listed in Section 5 to Council.

Background papers:

contact: Delia Gordon

Nil

Adrian Stanfield  
Director of Central Services

## **HUMAN RESOURCES STRATEGY (incorporating the Pay and Workforce Strategy)**

### **1 The Council's Vision**

The Council's vision as set out in the Corporate Strategy is:

To be a financially sustainable Council that delivers good value services, provides clear leadership and, with our partners, addresses the needs of the Borough.

### **2 Human Resource Strategy**

The Human Resources Strategy is about recognising and developing the crucial contribution of every employee. This is prompted by the expectation/aspiration that all employees will:

- be customer focused
- be corporately aware
- demonstrate a "can do" approach to work
- appreciate the Council as a good employer
- consider themselves as colleagues in a joint endeavour to achieve the corporate vision.

The HR Strategy will be updated annually and will identify improvement priorities for the year ahead. The annual update will also report on the achievement of the improvement priorities identified the previous year, and on the outcomes of the previous year's equal opportunities monitoring.

Four key "building blocks" are used to inform and direct human resource activities. These are:

- Leadership and Management
- Effective Recruitment and Retention
- Communication and Team Working
- Workforce Development.

The Sections below provide an overview of the Council's current approaches to developing these "building blocks".

## **Leadership and Management Development**

- We want managers and supervisors throughout Tonbridge & Malling Borough Council to meet their responsibilities to their colleagues by providing leadership, direction, purpose and support.
- Managers and supervisors will be expected to proactively seek out opportunities for service transformation and to set standards.
- All managers and supervisors will contribute to developing an organisational climate that encourages innovation, by encouraging their staff to engage positively in service transformation and in developing new ways of working.
- Corporate working will be promoted throughout the Council.
- All managers and supervisors will be expected to behave in accordance with the Council's Supervisory and Management Capability Checklists.
- Up to date advice, training and support on Council policies and procedures for dealing with a range of employee relations issues will ensure consistency of management style.
- New managers and supervisors will be equipped for their role by participating in appropriate training and development activities.
- Throughout their careers with the Council managers and supervisors will have opportunities to attend training and development events that reflect their responsibilities.

## **Effective Recruitment & Retention**

We want an employment package that attracts and retains capable people who are committed to delivering excellent services to the community.

- We will balance internal progression with external recruitment so that the Council continuously reinvigorates its talent pool, and that appropriate succession planning ensures an appropriately skilled workforce for the future.
- We will endeavour to attract suitable applicants by clear job descriptions, person specifications and advertisements.
- There will be a fair and consistent recruitment and selection framework that supports diversity within the workforce and that is regularly inspected by our internal audit team. Our workforce broadly reflects the ethnic and gender distribution of the residents of the borough.

- We will offer employees a fair and competitive rate for the job that reflects the principles of equal pay. We will ensure equal status for part-time staff. In 2018/19 of a workforce of 270 permanent employees, 107 were employed on a part time basis.
- Wherever possible, we will offer employees flexible working opportunities that reflect the diversity of the workforce and facilitate a healthy Work Life Balance.
- We will ensure that working environments are safe and healthy.
- We will foster a supportive management ethos that recognises and values everyone's contribution.
- We will offer employees suitable training and development opportunities.

### **Communication and Team Working**

We want to create a climate of trust, honesty and involvement. We recognise the need for open and honest two-way communication.

- We will maintain a system of annual individual appraisals and regular team briefings across the organisation.
- We will maintain a constructive relationship with accredited employee representatives and the Trade Union (Unison). There is an effective Joint Employee Consultative Committee which provides an opportunity for elected members, managers and employees to debate staffing issues.
- We will honour the Council's commitment to trust, honesty and involvement by working through employee relations issues according to the procedures specified in the Grievance, Disciplinary, Capability, Anti-Bullying and Harassment and Confidential Reporting Codes of Practice/Procedures.
- We will ensure that corporate information is easily accessible and will continue to develop the use of information technology for this purpose. All employees can access relevant corporate policies and e-learning modules on the Council's intranet.
- We will encourage development of a culture of corporate and co-operative working across the Council.
- We will encourage employees to influence the shape of future service delivery in an environment that embraces transformation and partnership working.

## Workforce Development

We want employees to know how their contribution fits into the bigger picture, and to have the skills, knowledge and information they need to do their job effectively. We want them to feel committed to the Council and to enjoy coming to work.

- We will provide new employees with information about their job and employment package.
- Every new employee will undergo a customised induction process.
- All employee's will have an annual performance appraisal which will review their performance over the past year, set personal objectives for the year ahead, and identify any training and development needs.
- All employees will have access to training and development activities that are linked with their individual objectives as well as those of the service to which they belong.
- We will deal firmly and fairly with poor performance.
- On return from absence due to sickness, all employee's will engage in a return to work interview with their line manager that will attempt to identify any organisational factors which may have contributed towards their illness.

### 3 Review of Improvement Priorities for the period April 2018 to March 2019

<b>Action</b>	<b>Progress</b>
<p><u>Developing leadership capacity</u></p> <p>i) Provide structured development opportunities that enhance management capacity and enable succession planning that takes account of the anticipated departure of many senior staff over the next 5 years.</p>	<p>The Benefit Office Supervisor and the Revenue &amp; Benefits Support Manager have undertaken a short course in "People Management Skills". The Senior Revenue Assistant, the Senior Revenue Officer and the Parking Support Manager have completed a short course in "Team Leadership". The Parking Manager has completed a course in ""Personal Effectiveness and Power".</p> <p>Many other opportunities have been taken to develop managerial capacity through project work, work shadowing</p>

	and the re-distribution of duties when colleagues flexibly retire.
<p><u><i>Developing the skills and capacity of the workforce</i></u></p> <p>i) Support the development of appropriate officers in skill sets required to meet current legislation/service requirements.</p>	<ul style="list-style-type: none"> <li>➤ There have been 515 instances of employees undertaking in house seminars, workshops and e-learning courses on topics such as the General Data Protection Regulations, Emergency Planning and Safeguarding.</li> <li>➤ There have been 213 instances of staff attending external training and development events or courses.</li> <li>➤ The four trainee Planning Officers have commenced their Masters degrees in Planning, Policy and Practice.</li> </ul>
<p><u><i>Organisational development</i></u></p> <p>i) Continue to re-align the Council's Establishment with its re-defined priorities.</p> <p>ii) Continue to develop the knowledge base of elected Members in response to changes in legislation, Government initiatives etc.</p>	<ul style="list-style-type: none"> <li>➤ 27 adjustments to job roles, have been agreed at the meetings of the General Purposes Committee in June, and October 2018 and January 2019.</li> <li>➤ Officers have provided Member briefings on a range of topics such as planning (including the Local Plan), housing and, licensing, at Committee and Advisory Board meetings.</li> </ul>
<p><u><i>Resourcing, recruitment and retention</i></u></p> <p>i) Provide work placements to local schools.</p>	<ul style="list-style-type: none"> <li>➤ Numerous work placement opportunities have been provided for Year 10 and 11 students.</li> </ul>

<p>ii) Explore opportunities for providing apprenticeship placements.</p>	<ul style="list-style-type: none"> <li>➤ Two staff in the Revenues and Benefits team in Financial Services are working towards the IRRV's Higher Level Revenue &amp; Benefits Practitioner Apprenticeship (Level 4).</li> <li>➤ One member of the IT team is undertaking a Level 2 IT Application Specialist Apprenticeship.</li> <li>➤ The Council continues to consider whether or not vacancies for posts provide suitable apprenticeship opportunities, and will promote such opportunities when they arise.</li> </ul>
<p><u>Pay and Reward</u></p> <p>The Council continues to align its pay settlements with those set elsewhere in the Public Sector.</p>	<p>The Council awarded a 2% pay settlement for 2019/20.</p>

#### 4 Equalities Monitoring 2018/19

In accordance with Equality legislation, the Authority is legally obliged to consider how our activities as an employer affect people who share different protected characteristics.

The information included in the tables below shows the outcomes of this monitoring for the period 2018/19. For the sake of comparison, a percentage analysis of the demographic profile of the Borough according to gender, ethnicity and disability is shown in Table 10 and a breakdown of the race, disability, gender and age distributions of the workforce in Tables 11 & 12.

In accordance with commitments made in the Equality Impact Assessment of the Flexible Working Policy the outcomes of the monitoring of the return rates from maternity leave and applications for flexible working are included in Tables 8 & 9.

**Table 1 – Analysis of applications for jobs**

<b>Total Applicants</b>	387
Male	177
Female	210
Disabled	18
Ethnic Minority	74

<b>Shortlisted</b>	88
Male	39
Female	49
Disabled	8
Ethnic Minority	16

<b>Appointed</b>	29
Male	12
Female	17
Disabled	1
Ethnic Minority	4

**Table 2 – Analysis of Promotions**

<b>Promotions</b>	16
Male	6
Female	10
Disabled	0
Ethnic Minority	0

**Table 3 – Analysis of Disciplinary Hearings**

<b>Hearings</b>	3
Male	2
Female	1
Disabled	0
Ethnic Minority	0

**Table 4 – Analysis of Capability Hearings**

<b>Hearings</b>	0
Male	0
Female	0
Disabled	0
Ethnic Minority	0

**Table 5 – Analysis of Grievance Hearings**

<b>Cases</b>	1
Male	0
Female	1
Disabled	0
Ethnic Minority	0

**Table 6 – Instances of staff within the Council receiving training for which a direct cost has been incurred.**

<b>Total</b>	<b>White</b>	<b>Non White</b>	<b>Male</b>	<b>Female</b>	<b>Disabled</b>
213	209	4	62	151	5

**Table 7 – Applications for changes to working patterns and flexible working, and success rates**

<b>Nature of the request</b>	<b>Requests</b>	<b>Requests granted</b>
Flexible retirement	2	2
Reduction/increase in working hours or change in working pattern	6	6

**Table 8 – Return rates from maternity leave**

<b>Category</b>	<b>Number</b>
Number of employees on maternity leave in 18/19	3
Number still on maternity leave in 2019/20	1
Number of employees who left the Council's employment on or shortly after returning from maternity leave	0
Number who returned to employment with the Council in 18/19	2

**Table 9 – Demographic analysis of the Borough**

<b>Equality Characteristic</b>	<b>Percentage</b>
Male	48
Female	52
White	96
Ethnic Minority	4
Permanently sick or disabled	3

**Table 10 – Gender, disability and race distribution of the workforce**

In March 2019 there were 270 employees, of which 107 were part time.

<b>Equality Characteristic</b>	<b>Headcount</b>
Gender	Male – 104 Female - 166
Disability	Employees who consider themselves to be disabled – 5
Ethnicity	White – 260 Black – 4 Asian or Asian Black – 6 Other Asian – 0 Mixed - 0

Note – any discrepancies in the totals above are due to employees not disclosing personal information.

**Table 11 – Age distribution of the workforce**

<b>Age range</b>	<b>Number of employees</b>
Up to 19	1
20 - 25	18
26 - 35	34
36 - 45	55
46 - 55	87
56 - 65	60
Over 65	15

## **5 Workforce Development Plan April 2019 – March 2020**

### **Developing leadership capacity**

- Continue with the provision of structured development opportunities that enhance our management capacity and enable succession planning that takes account of the potential departure of many experienced staff over the next five years.

### **Developing the skills and capacity of the workforce**

- Continue to support the ongoing professional development of staff, and to equip them with the knowledge and skills required to deliver services, to respond to changes introduced by the Government, and to the Council's transformation agenda. Specific areas of need will be identified during the 2019/20 performance appraisal process.

- Continue to equip staff with the digital skills required to support changes in the way we work.
- Continue to equip staff with the knowledge and skills required to support the Council's Emergency Plan.

### **Organisational Development**

- Consider the impact on the Council's policies of any proposals from the Government to amend existing employment legislation, and re-align the Council's HR policies with the timetable for any proposed amendments.
- Continue to provide briefings for Members on legislative change etc. at Committee meetings and Advisory Boards, and, where appropriate commission dedicated training sessions on cross cutting corporate issues.

### **Resourcing, recruitment & retention**

- Continue to re-align the Council's Establishment to address shifting requirements for service delivery.
- Continue to explore options with other Councils for shared service delivery.
- Continue to explore alternative service delivery models.
- Develop a bespoke recruitment strategy on a case by case basis for hard to fill posts.
- Continue to ensure that work placements are provided to local schools.
- Continue to explore opportunities for offering apprenticeships within the Council.
- Identify roles for new recruits to the Council in the Council's Emergency Plan.

### **Pay and Reward**

- Review the Pay Policy Statement (by March 2020).
- Track the benefits package offered by our competitors for staff and review salaries in line with the term in employees contracts of employment which reads "your salary will be revised on 1 April each year by an amount determined by the Authority having regard to movements in the Retail Price Index, comparative pay settlements and prevailing economic conditions" (by March 2020).

## TONBRIDGE & MALLING BOROUGH COUNCIL

### GENERAL PURPOSES COMMITTEE

19 June 2019

#### Report of the Director of Central Services & Deputy Chief Executive

#### Part 1- Public

#### Delegated

### 1 DISPENSATION – CLLR MARK DAVIS

#### Summary

**This report asks Members to consider a request for a dispensation under section 33 of the Localism Act 2011 to enable Councillor Mark Davis to continue to participate in meetings of the Area 1 Planning Committee, the Planning and Transportation Advisory Board and other meetings where the Local Plan is under consideration**

#### 1.1 Introduction

- 1.1.1 On 20 October 2016 the Committee considered a request for a dispensation under the Code of Conduct to enable Councillor Mark Davis to participate in meetings of the Area Planning Committees, the Planning and Transportation Advisory Board and other meetings where the Local Plan was under consideration in circumstances where Councillor Davis would otherwise be required to declare an Other Significant Interest (by virtue of being a partner in Warners Solicitors and having a client of the firm with an interest in the matter under consideration) and leave the room having taken no part in the discussion or vote.
- 1.1.2 It was noted that Councillor Davis did not seek a dispensation to vote on any such reports but sought permission to be allowed to remain in the room and participate in discussions. The grounds for the request for the dispensation were set out in an Annex to the report, which for convenience is attached as **Annex 1**.
- 1.1.3 Consultation had taken place with the two independent persons (who at that time were David Ashton and John Gledhill) in advance of the meeting and their comments were noted. Particular reference was made to the observation raised by Mr Ashton that Councillor Davis could be considered to already have a favoured position by virtue of being a serving member of the Borough Council which could be seen to benefit potential business clients. The Director of Central Services reminded Members that any potential commercial benefits were not the 'test' for the Committee to consider but whether the granting of dispensation was

appropriate in all the circumstances, having regard to a number of matters including the need to promote high standards of ethical conduct whilst at the same time allowing for the efficient and effective administration of Borough Council business.

- 1.1.4 Careful consideration was given to the request for dispensation as set out by Councillor Davis and whether his withdrawing from meetings for potentially having an Other Significant Interest due to his employment status as a partner of Warners Solicitors represented a disenfranchisement for him and local residents. Members felt it important that Councillor Davis should be able to listen to any relevant discussions to aid his understanding of any concerns raised and to enable him to accurately report the Borough Council's views to his constituents. The importance of setting out clear criteria for the dispensation to avoid confusion and to provide transparency for Members and residents was also recognised.
- 1.1.5 The Director of Central Services reminded the Committee of the circumstances under the current Code of Conduct where any Member with an Other Significant Interest had the right to address the meeting (for example via a three minute statement at Area Planning Committees) and that this should apply to Councillor Davis if a dispensation was granted.
- 1.1.6 After careful consideration, it was proposed that dispensation be granted to allow Councillor Davis to remain in the meetings of the:
- Area Planning Committees; and
  - Planning and Transportation Advisory Board, Cabinet and Full Council where the Local Plan was discussed
- to listen to, but not participate in, the debate or vote on the matter in hand. In addition, Councillor Davis would have the right to address the Committee but would not then be permitted to take further part in the discussions, this dispensation to be announced at all relevant Committees to avoid confusion. Finally, there was to be a formal review of the dispensation after 12 months to monitor progress.
- 1.1.7 It was therefore resolved that the request for dispensation for Councillor Mark Davis be approved on the grounds set out above and to remain in effect until the next local elections in May 2019, subject to anything arising from the formal review.
- 1.1.8 Given the progress of the Local Plan, which was central to the reasons for the grant of the dispensation, the review was held in abeyance until October 2018 so as to allow for a considered review of the impact of the dispensation upon Cllr Davis' participation in the process.

- 1.1.9 A formal review of the dispensation was subsequently considered by this Committee on 8 October 2018. No further action was noted, and the dispensation remained in force until the May 2019 elections.
- 1.1.10 Cllr Davis was successful in achieving re-election to the Borough Council in May 2019 and has therefore requested that a new dispensation be granted for the period to May 2023.

## **1.2 DISPENSATIONS UNDER THE LOCALISM ACT 2011**

- 1.2.1 Members may be familiar with the requirements of the Localism Act 2011 and supporting regulations concerning Disclosable Pecuniary Interests (DPI). In addition to the requirement to disclose to the Monitoring Officer the existence of any DPI, Members must also comply with specified requirements where they are present at a meeting of the Council and have a DPI in any matter to be considered, or being considered at the meeting. Specifically, a Member must not
- (1) participate, or participate further, in any discussion of the matter at the meeting, or
  - (2) participate in any vote, or further vote, taken on the matter at the meeting.
- 1.2.2 The Council's adopted Code of Conduct imposes identical requirements in relation to Members with an Other Significant Interest (OSI). The Code further requires that Members with a DPI/ OSI in a matter under consideration must withdraw from the meeting room whenever it becomes apparent that the business is being considered and not seek to improperly seek to influence a decision about that business.
- 1.2.3 Under section 33 of the Localism Act, the Council may, on receipt of a written request to the Monitoring Officer, grant a dispensation to councillors and co-opted members relieving them from restrictions on participating, or participating further, or voting or further voting in meetings where consideration is being given to an item of business in which they have a Disclosable Pecuniary Interest.
- 1.2.4 The Borough Council may grant a dispensation only if, having regard to all relevant circumstances, it considers that
- (a) 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; or
  - (b) 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; or
  - (c) granting the dispensation is in the interests of persons living in the Authority's area; or

- (d) 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) it is otherwise appropriate to grant a dispensation.

1.2.5 A dispensation must specify the period for which it has effect, and the period specified may not exceed four years

1.2.6 Under the Council's constitution, dispensations under paragraphs (a) and (d) above may be granted by the Monitoring Officer, in consultation with the Chairman and Vice-Chairman of the Joint Standards Committee and the Independent Persons. Dispensations under paragraphs (b), (c) and (e) may only be granted by the General Purposes Committee, in consultation with the Independent Persons. The present request does not fall within paragraphs (a) or (d) and the matter is therefore referred to the General Purposes Committee for consideration.

### **1.3 Review**

1.3.1 With the benefit of the previously agreed dispensation, Councillor Davis attended a number of meetings of the Area 1 Planning Committee, Planning & Transportation Advisory Board and Council. The Local Plan has of course been reported to a number of meetings since the grant of the original dispensation, with Council resolving on 12 September 2018 to approve the Plan for the purposes of public consultations and submission to the Secretary of State in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012.

1.3.2 Councillor Davis has been able to listen to, but not participate in, the debate or vote on the matter in hand on each occasion, in circumstances when he would otherwise have been required to leave the room.

1.3.3 No issues have arisen from the operation of the previous dispensation.

1.3.4 For completeness I should add that I have consulted the 2 current Independent Persons (David Mercier and Clive Grenyer). Mr Mercier has confirmed that he has no issues with the continuation of the dispensation. Mr Grenyer has not commented on the proposed dispensation as he is personally acquainted with Cllr Davis' family.

### **1.4 Legal Implications**

1.4.1 As set out above.

### **1.5 Financial and Value for Money Implications**

1.5.1 None arising out of this report.

### **1.6 Recommendations**

1.6.1 Members are requested to consider Councillor Davis' request for a dispensation. If approved, it is proposed that the dispensation would remain in effect until the next local elections in May 2023.

contact: Adrian Stanfield

Adrian Stanfield  
Director of Central Services & Deputy Chief Executive

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## TONBRIDGE & MALLING

**Cllr Mark Davis**

Borough Councillor for Cage Green Ward

## BOROUGH COUNCIL

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Kent TN10 4EY

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Mr Adrian Stanfield  
Director of Central Services and Monitoring Officer  
Tonbridge & Malling Borough Council  
Gibson Building, Gibson Drive  
Kings Hill  
West Malling  
Kent ME19 4LZ

6 October 2016

Dear Adrian

### **General Purposes Committee 20 October 2016 Request for Dispensation – Code of Conduct**

You have requested that I write to you as Monitoring Officer in support of the application for dispensation to enable me to participate in Council meetings, particularly meetings of the Planning and Transportation Advisory Board and Planning Committee Meetings where I would otherwise have to withdraw from the meeting entirely by virtue of my potentially having an Other Significant Interest.

As a Partner in Warners Solicitors I have hitherto taken the view that I should not participate in proceedings at meetings which involve clients of my firm in case there is a suggestion that I have influenced the decision of the committee for my client's benefit. I accept that there are a number of considerations which would determine whether or not I have an Other Significant Interest in each case but I have tended to take the cautious approach and withdraw when I know a client of my firm to be involved. Although I have on occasion exercised my right to speak before the application is debated by members of the committee and then withdraw.

Originally I simply retired to the public seats during the relevant agenda items and observed the proceedings of the committee from there. But it was brought to my attention that the Code of Conduct required me to withdraw from the meeting completely. As I have discussed with you on occasion in the past, I take the view that this puts me in a worse position than other members of the public and on occasion inhibits my duty to act in the best interests of my client by preventing me from observing the proceedings of the committee and the debate which has led to the decision taken. For example, if the decision is to refuse a planning application submitted by my client I would like to be able to understand the reasons for the decision by listening to the debate with a view to advising my client as to the implications thereof which I would be perfectly entitled to do if I were not a member of the Council.

This has been brought into sharper focus recently relation to agenda items of the Planning and Transportation Advisory Board regarding the Local Plan. I attended and participated in the initial discussion of that board concerning the consultation document but it occurred to

me at that meeting that there may be clients of Warners whose land holdings are affected by the consultation document one way or another and I have subsequently discovered that to be the case. I have therefore not attended subsequent meetings of the Cabinet where the Local Plan has been discussed although I would have liked to have done so. Indeed my specialist field of law is commercial property work which includes advising on development sites, and I believe that my qualifications and experience may well be beneficial to other members who might find my contribution to debate useful.

I therefore seek dispensation from the requirement to leave the room on these occasions and if the General Purposes Committee deems it appropriate to allow me to participate in the debate, although not to take part in any vote.

With kind regards

Yours sincerely

A solid black rectangular box redacting the signature of M O Davis.

**M O Davis**

# Agenda Item 6

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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# Agenda Item 7

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT  
INFORMATION**

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# Agenda Item 9

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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