

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**GENERAL PURPOSES COMMITTEE**

**20 October 2016**

**Report of the Director of Central Services & Monitoring Officer**

**Part 1- Public**

**For decision**

**1 REQUEST FOR DISPENSATION – CODE OF CONDUCT**

**1.1 Introduction**

1.1.1 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 participate in meetings of the Planning and Transportation Advisory Board and other meetings where the Local Plan is under consideration.

**1.2 DISPENSATIONS UNDER THE LOCALISM ACT 2011**

1.2.1 Members will 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-Chairmen 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 Request from Councillor Davis**
- 1.3.1 Councillor Davis is Chairman of the Street Scene and Environment Services Advisory Board, and a member of the Area 1 Planning Committee, Planning & Transportation Advisory Board, Finance, Innovation & Property Advisory Board and the Housing Associations Liaison Panel.
- 1.3.2 As many Members will be aware, Councillor Davis is a Solicitor and a partner in the local firm Warners Solicitors. His firm acts for a number of landowners in the Borough and Councillor Davis has regularly declared an interest at previous meetings of the Council when an item of business has either related to, or had the potential to relate to land in the ownership of one of their clients. Such interests have not been DPIs but in certain circumstances have been capable of amounting to an OSI. Ultimately, the existence or otherwise of an interest has been fact specific on each occasion and will depend upon the content of the report in question.
- 1.3.3 The emerging local plan has presented particular challenges to Councillor Davis in that the potential exists for clients of his firm to have an interest in land which may or may not come forward for designation through the local plan process. However, by taking the cautious approach and declaring an interest Councillor Davis has

then been precluded from discussing the local plan and furthermore has been required to leave the room. Councillor Davis does not seek a dispensation to vote on any such reports, but does seek the permission of this Committee to allow him to remain in the room and contribute to the discussions.

- 1.3.4 Reports on the local plan have been considered by the Planning & Transportation Advisory Board (of which Councillor Davis is a member) or by Cabinet, so it would be appropriate for any dispensation to be limited to meetings of these Committees.
- 1.3.5 The grounds for Councillor Davis' request for the dispensation are set out in his letter at **Annex 1**.
- 1.3.6 Consultation will take place with the 2 Independent Persons (David Ashton and John Gledhill) in advance of the meeting of the Committee. Any comments will be reported at the meeting.

#### **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 suggested that the dispensation remain in effect until the next local elections in May 2019.

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