

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.

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