

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

18 July 2022

Report of the Monitoring Officer

Part 1- Public

For decision

1 AMENDMENT TO DISPENSATION – CLLR MARK DAVIS

Summary

This report asks Members to consider a request to amend a dispensation granted to Cllr Mark Davis under section 33 of the Localism Act 2011 to allow him to participate in meetings of Overview and Scrutiny Committee/ the Scrutiny Select Committees where the Local Plan is under consideration

1.1 Introduction

1.1.1 On 19 June 2019 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.

1.1.3 A previous dispensation in those terms had been granted to Cllr Davis on 20 October 2016.

1.1.4 After careful consideration, it was resolved by the Committee that a 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.

- 1.1.5 The dispensation was to remain in effect until the next local elections in May 2023.
- 1.1.6 In light of the governance changes introduced by the Leader in April 2022, the dispensation granted to Cllr Davis now requires updating. In particular, the new Scrutiny Select Committees are not covered by the existing dispensation. Given that the Advisory Boards have now been abolished, consideration of the Local Plan is likely to take place at the relevant Scrutiny Committee prior to Cabinet/ Council.
- 1.1.7 Cllr Davis is a member of the Housing & Planning Scrutiny Select Committee. The next scheduled meeting of that Committee is on 19 July. However, the next scheduled meeting of the General Purposes Committee after 18 July will not be until 12 September, hence the reason for bringing this request to this Committee as an urgent item.
- 1.1.8 Given that the proposed amendment seeks only to update the existing dispensation in response to recent changes to the governance structure, I have no objections as Monitoring Officer.

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 Chair and Vice-Chair of the Joint Standards Committee and the Independent Person. Dispensations under paragraphs (b), (c) and (e) may only be granted by the General Purposes Committee, in consultation with the Independent Person. The present request does not fall within paragraphs (a) or (d) and the matter is therefore referred to the General Purposes Committee for consideration.
- 1.2.7 For completeness, I have consulted David Mercier, the Independent Person on the proposed amendments to Cllr Davis' dispensation. He has no objection to the proposed amendment.

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, Cabinet and Council. The Local Plan has of course been reported to a number of meetings since the grant of the original dispensation.
- 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.

1.4 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 **APPROVE** Councillor Mark Davis' request to amend his current dispensation so that it reads as follows:-

'a dispensation be granted to allow Councillor Mark Davis to remain in the meetings of the Area Planning Committees, the Overview & Scrutiny Committee, any of the Scrutiny Select Committees, Cabinet and Full Council where the Local Plan is discussed (in circumstances where he would otherwise be required to declare an Other Significant Interest) to listen to, but not participate in, the debate or vote on the matter in hand. In addition, Councillor Davis will have the right to address the meeting but will not be permitted to take part further in the discussions.'

1.6.2 If approved, it is proposed that the amended dispensation would remain in effect until the next local elections in May 2023.

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