



Report to Standards and General Purposes Committee

Date: 8 October 2020

Reference number: TBC

Title: Guidance for Dispensations

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Ward(s) affected: none specific

Recommendations: The committee is asked to:-

- 1. Adopt the criteria for granting a dispensation set out in Appendix 1, the guidance to councillors set out in Appendix 2 and Application form in Appendix 3**
- 2. Give delegated authority to the Monitoring Officer in consultation with the Chairman of the Standards and General Purposes Committee to make minor amendments to the criteria, guidance and application form.**

Reason for decision: The adoption of the criteria, guidance and application form will ensure a consistent and transparent approach to the consideration and grant/refusal of requests for dispensations and therefore strengthen the trust and confidence in the Council.

Executive summary

- 1.1** This report seeks approval of the criteria for considering whether to grant a dispensation, guidance for members seeking a dispensation and the application form to request a dispensation.

Content of report

- 1.2** The Localism Act 2011 states that a councillor or co-opted member who has a disclosable pecuniary interest (DPI) cannot participate in a meeting for that item and cannot vote on the item. The Council's Code of Conduct also requires a member to withdraw from the meeting where they have a DPI.

- 1.3 If a member has a prejudicial interest the Council's Code of Conduct also requires withdrawal from the meeting, no participation and no voting on the item by the member.
- 1.4 These statutory requirements and rules are in place to ensure members take decisions in the public interest. There are however situations when it may be appropriate for a councillor or co-opted member to still take part in the debate or take part and vote on the matter.
- 1.5 The Localism Act 2011 sets out 5 instances when a dispensation for a DPI may be granted. These are set out as part of the Criteria (see Appendix 1). One of these instances must be found to apply in order for a dispensation to be granted.
- 1.6 The Council's Constitution gives the Monitoring Officer and this Committee delegated authority to grant dispensations. It is expected that for speed the majority of dispensations will be given by the Monitoring Officer. It is good practice to adopt criteria for considering dispensation requests to ensure consistency and approval of the criteria by the Committee will ensure appropriate oversight and transparency.
- 1.7 As each request for a dispensation should be considered on its own merits the criteria cannot be exhaustive therefore the criteria is deliberately high level to allow all applicable circumstances to be taken into account.
- 1.8 Alongside the criteria, the proposed Guidance for Members is at Appendix 2. The Guidance has the following sections:
 - When it might be appropriate to request a dispensation
 - What are the circumstances in which I ask for a dispensation
 - What are the circumstances in which I ask for a dispensation
 - Does the request for a dispensation have to be granted
 - Are there any circumstances when a dispensation will not be granted
 - How do I make a request for a dispensation
 - How much notice is needed to consider my request
- 1.9 These sections give more detail on the criteria and will also be used as further guidance alongside the criteria when considering requests for dispensations.
- 1.10 The proposed application form at Appendix 3 has been drafted to ensure that requests contain all relevant information which the Monitoring Officer will need to consider requests.
- 1.11 It should also be noted that blanket or general dispensations can also be granted to cover all applicable members. This might apply in relation to a particular project or scheme which, due to its nature, is likely to engage a large proportion of members and

therefore engage one or more of the instances required in order to grant a dispensation in the Localism Act. In such a case, the criteria and guidance are still relevant, however councillors would not have to make individual requests. Although the current delegation to the Monitoring Officer would cover granting a blanket or general dispensation, it is expected that this would normally be referred to the Committee for decision or the Chairman would be consulted before making a decision.

Other options considered

- 1.12 It is an option for the Committee to not adopt criteria for granting dispensations, either as proposed or amended. The criteria and guidance can still be used as guides and this will therefore allow greater flexibility but also potentially less consistency.

Legal and financial implications

- 1.13 The requirement for a dispensation in certain circumstances is detailed in the Localism Act 2011 and the basic approval process is set out in the Council's Constitution. The content of this report seeks to provide further detail.
- 1.14 There are no financial implication as dealing with dispensation requests is already required as part of day to day matters already dealt with by the Monitoring Officer.

Corporate implications

- 1.15 The criteria and guidance will promote consistency when considering and granting dispensations for councillors and co-opted members and will help to promote confidence in the decisions of the Council.

Consultation and communication

- 1.16 As the criteria and process is based on statutory requirements there has been no consultation with members.

Next steps and review

If adopted the criteria would be used and the guidance and application form made available to all members.

Background papers

None

Your questions and views (for key decisions)

If you have any questions about the matters contained in this report please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider please inform the democratic services team. This can be done by telephone 01296 382343 or email democracy@buckinghamshire.gov.uk



BUCKINGHAMSHIRE COUNCIL

Criteria for Granting Dispensations

The provisions of section 33 of the Localism Act 2011 must be considered when deciding whether to grant a dispensation. Under section 33(2) a Council may grant a dispensation to a member or co-opted member of an authority only if, after having had regard to all the relevant circumstances, it considers that one of the following applies: -

- (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the Council as to impede the transaction of the business;
- (b) without the dispensation the representation of different political groups on the Council would be so upset as to alter the likely outcome of any vote relating to the business;
- (c) the granting of the dispensation is in the interests of persons living in the Council's area;
- (d) without the dispensation each member of the Councils Executive would be otherwise prohibited from participating in the business to be transacted; or
- (e) that it is otherwise appropriate to grant a dispensation.

A decision under (e) above will involve balancing the financial or personal interests held by the member seeking the dispensation, against the potential effect on the outcome of the matter if the member is unable to speak and/or vote.

In assessing the relevant weight to be placed on these factors the monitoring officer should seek to maintain public confidence in the conduct of Council business, as well as ensuring that business can continue to be conducted efficiently and effectively.

Regard shall be had to the following: -

1. **Whether the nature of the Members interest is such that to allow them to participate would damage public confidence in the conduct of the authority's business?**

For example, a dispensation would not normally be granted to a Member who has a disclosable pecuniary interest, or a prejudicial interest arising as a result of the effect of the decision on their personal financial position or that of a relative or close associate.

But a dispensation would be more likely to be granted where a prejudicial interest arose from the financial effect the decision might have on a public body of which they were a member.

- 2. Whether the interest is common to the Member and a significant proportion of the general public?**

If this is the case, a dispensation is more likely to be granted.

- 3. Is the participation of the Member in the business that the interest relates to justified by the Member's particular role or expertise?**

To have the benefit of the Members expertise before making a decision may justify a dispensation being granted – even if limited to allow speaking only.

- 4. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by a Select Committee? And is the Member's interest not a financial one?**

In such circumstances it is likely that a dispensation will be granted.

- 5. Whether without the grant of the dispensation the business of the Council would be frustrated/halted.**

In such circumstances it is likely that a dispensation will be granted.

V1 April2020

BUCKINGHAMSHIRE COUNCIL

Guidance for Members seeking a Dispensation

1 When might it be appropriate to request a dispensation?

- 1.1 The Localism Act 2011 and the Code of Conduct provides that if an elected or co-opted member has a Disclosable Pecuniary Interest (DPI) or a Prejudicial Interest in an item of Council business, they should not speak or vote on the matter and should leave the meeting whilst it is discussed – subject to the exemption re Prejudicial Interests at Paragraph 2.21 of the Code – see 1.2 below.
- 1.2 Members of Buckinghamshire Council can make representations, answering questions or giving evidence relating to the business at meetings where they would otherwise have a Prejudicial Interest where a member of the public has a similar right. However, the member must leave the meeting before the vote is taken (see Paragraph 2.21 of the Code of Conduct).
- 1.3 However the legislation/Code provides that even where members have a DPI or a Prejudicial interest they may, in certain circumstances, request a dispensation from the Council. This dispensation can be either just to speak, or to speak and to vote, at the meeting.

2. What are the circumstances in which I ask for a dispensation?

- 2.1 Under Section 33(2) of the Act a Council may grant a dispensation to a member or co-opted member only if, after having had regard to all the 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 Council as to impede the transaction of the business;
 - (b) without the dispensation the representation of different political groups on the Council would be so upset as to alter the likely outcome of any vote relating to the business;
 - (c) the granting of the dispensation is in the interests of persons living in the Council's Area;
 - (d) without the dispensation each member of the Councils Executive would be otherwise prohibited from participating in the business to be transacted; or
 - (e) that it is otherwise appropriate to grant a dispensation.
- 2.2 Elected or co-opted members of a town or parish council can request a dispensation for their Council by making a written request to the Town/Parish Clerk.

3. Does the request for a dispensation have to be granted?

No. There is a discretion as to whether or not to grant the request. It can also grant a partial dispensation to enable you to speak but not vote or a dispensation to enable you to speak and vote. The Standards and General Purposes Committee has adopted a set of criteria to assist it in deciding the circumstances in which a request for dispensation will be granted.

4. Are there any circumstances when a dispensation will not be granted?

Yes. A dispensation will not be given:

- to allow a member to vote in a Select Committee on any decision made by a body of which they were a member at the time the decision was taken;
- to allow a cabinet member with a DPI/Prejudicial Interest in an item of executive business to take an executive decision about it on their own.

5. How do I make a request for a dispensation?

- 5.1 A request must be made in writing and signed by the member seeking dispensation to the monitoring officer. A dispensation for a town or parish councillor must be made to the town/parish clerk.
- 5.2 An application can be made by completing an online form available on the standards pages of the Council's website.
- 5.3 Members should state the nature of the interest for which a dispensation is sought, the nature of the request (i.e. to enable you to speak only or to speak and vote) and the duration. A dispensation may be granted for a specific period i.e. only for one meeting or for a period up to 4 years.
- 5.4 You should also specify the reasons why you think the dispensation should be granted.

6. How much notice is needed to consider my request?

- 6.1 The Council has delegated authority to grant dispensations to the monitoring officer so they can be dealt expeditiously. The monitoring officer can also refer requests to the Standards and General Purposes Committee for decision.
- 6.2 You should leave as much time as possible between requesting a dispensation and the meeting for which the dispensation is sought, in order to allow time to determine the request.
- 6.3 It is therefore suggested that you submit your request a minimum of **10 working days** prior to the relevant meeting, to ensure that your request can be properly considered.

V2 September 2020

**APPLICATION FOR A DISPENSATION
SECTION 33 - LOCALISM ACT 2011**

To: The Monitoring Officer
Email: monitoringofficer@buckinghamshire.gov.uk

<p>Full name of member seeking dispensation</p> <p><i>NOTE: the application must be submitted by the individual member seeking the dispensation</i></p>	
<p>Type and details of interest for which dispensation is sought</p> <p><i>NOTE: this would be either a Disclosable Pecuniary Interest or a Prejudicial Interest. Members should give details of the interest e.g. ownership of land/ member of outside organisation</i></p>	
<p>Nature and duration of dispensation sought</p> <p><i>NOTE: dispensations may be granted for speaking only or for speaking and voting. They may be granted to enable a member to speak or to vote or to speak and vote at a particular meeting or may be granted for a specified period of time (up to a maximum of 4 years)</i></p>	
<p>Reasons why you think the Dispensation should be granted (see below for the grounds under which a dispensation can be granted).</p> <p><i>NOTE: there is a discretion whether or not to grant the request for a dispensation see Section 33(2)(e) below.</i></p>	

Signed: _____

Dated: _____

NOTE: Under Section 33(2) of the Act a Council may grant a dispensation to a member or co-opted member of an authority only if, after having had regard to all the 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 Council as to impede the transaction of the business

(b) without the dispensation the representation of different political groups on the Council would be so upset as to alter the likely outcome of any vote relating to the business

(c) the granting of the dispensation is in the interests of persons living in the Council's area

(d) without the dispensation each member of the Councils Executive would be otherwise prohibited from participating in the business to be transacted – or -

(e) that it is otherwise appropriate to grant a dispensation.