

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

21 September 2009

Requests for Dispensations – Yorkshire Coast and Moors County Area Committee

1.0 PURPOSE OF REPORT

- 1.1 To present, for Members' consideration, requests from certain dual-hatted County Councillors on the Yorkshire Coast and Moors County Area Committee for a dispensation, in almost identical terms and in respect of the same issues, from the Standards Committee.

2.0 BACKGROUND

- 2.1 The following County Councillors have been invited to consider making a request for a dispensation from the Standards Committee:

- a) thirteen (out of fourteen) County Councillors on the Yorkshire Coast and Moors County Area Committee.

A list of Members affected and invited to consider submitting dispensation requests is set out at Appendix 1. Copies of requests received will be circulated at the Standards Committee's meeting.

- 2.2 The County Councillors who have been invited to submit a dispensation application are also members of Scarborough Borough Council. Those County Councillors who have submitted a request are seeking a dispensation to enable them to speak, vote and be included within the quorum at a meeting (or meetings) of the Yorkshire Coast and Moors County Area Committee on which they sit, when that Committee is determining:

- a. an application for the registration of a village green at The Sunken Garden, St Nicholas Cliff/Marine Parade, Scarborough; and
b. an application for the registration of a village green at The Old Pool Site, Mulgrave Road, Whitby.

The applications relate to land in the ownership of Scarborough Borough Council. The County Councillors are also members of Scarborough Borough Council.

- 2.3 Regarding the Sunken Garden site, in July 2004 the Executive of Scarborough Borough Council approved the principle of the disposal of the land in question for value. Further decisions in relation to the approval of the sale were taken by the Executive of Scarborough Borough Council during 2005 to 2008. Scarborough Borough Council is objecting to the village green application.

- 2.4 Regarding the Old Pool Site, Scarborough Borough Council previously objected to the village green application however withdrew its objection in June 2009 in light of the evidence submitted.

- 2.5 The next meeting of the Yorkshire Coast and Moors County Area Committee at which the applications will be considered is 1 October 2009. For the reasons set out in paragraph 3.0 below, members of the Area Committee who are also members of Scarborough Borough Council are likely to be considered to have a prejudicial interest.
- 2.6 The Monitoring Officer is currently exploring the extent to which such dual-hatted Members may have participated in relevant decision making at Scarborough Borough Council. Should any such dual-hatted Members have participated in such decision-making they may, alongside their prejudicial interests, be subject to other considerations preventing their participation in the applications in question at the Area Committee meeting(s). Given the short timescale to address these issues before the Area Committee meeting on 1 October however, the Standards Committee is requested to consider the granting of a dispensation to all dual-hatted Members: should the Committee be minded to grant a dispensation, then should there be any other issues preventing dual-hatted Members' participation, such Members would be advised not to rely on the dispensation and to withdraw from the Area Committee for the applications in question.
- 2.7 The quorum for the Area Committee meeting is four. Members in this situation may decide to declare a prejudicial interest and take no part in the decision on these applications. This would lead to the Area Committee becoming inquorate, unable to take a decision on these matters, thereby causing a delay in the decision making process. It is important that the County Council, through its Area Committee, is able to discharge its obligations in relation to the village green applications.
- 2.8 It was therefore thought sensible to invite affected Members to consider making a dispensation request and for the Committee to consider the matter.
- 2.9 Dispensation application forms have been circulated to the Members affected. Completed dispensation application forms received will be presented to the Standards Committee at its meeting.
- 2.10 The Committee's Dispensation Request Procedure is attached as Appendix 2 to this report.

3.0 INTERESTS ISSUES

- 3.1 Regarding the Sunken Garden site, Scarborough Borough Council has previously decided that the land should be sold and is objecting to the village green application. It is understood that the sale is intended to be for value and therefore there are financial implications in the sale of the land for Scarborough Borough Council. The registration of the land as a village green would prevent its being used for any purpose inconsistent with that designation, and accordingly this would impact upon the planned use and the value of the land. It is important however that the application for registration of the village green is properly considered on its merits.
- 3.2 Regarding the Old Pool Site, Scarborough Borough Council previously objected to the village green application however later withdrew its objection. The registration of the land as a village green would prevent its being used for any purpose inconsistent with that designation, and, accordingly this would impact upon the value of the land. Again, it is important however that the application for registration of the village green is properly considered on its merits.
- 3.3 County Councillors on the Area Committee who are members of Scarborough Borough Council have included membership of the Borough Council in their

County Council register of interests. Members have a personal interest in any business of the County Council where it relates to or is likely to affect a registered interest. They will therefore have a personal interest in any decision of the County Council relating to or likely to affect the Borough Council which will include the decisions in relation to the village green applications, as the land is owned by the Borough Council.

- 3.4 It must then be considered whether the Members concerned will also have a prejudicial interest. Prejudicial interests arise, amongst other things, when a decision in question will affect a regulatory matter concerning, or the financial position of, a Member's interest (in this case the Borough Council), *and* where a member of the public knowing all the circumstances would reasonably regard the interest to be such as to be likely to prejudice their judgement of the public interest.
- 3.5 In this case, regarding the Sunken Garden site, the registration of the land as a village green would impact upon its development as planned by the Borough Council, and in respect of the Old Swimming Pool Site, registration of the land as a village green would impact upon the value of the land as it would prevent its future development. It is therefore likely that the public might expect that a Member's judgement of the public interest in determining the village green applications would be affected. In the circumstances Members in this position are likely to have a prejudicial interest.

4.0 DISPENSATION PROCESS

- 4.1 In accordance with paragraph 12 of the Code, and subject to his/her right to speak (where appropriate), a Member with a prejudicial interest in a matter must withdraw from the room or chamber where a meeting is being held UNLESS s/he has obtained a dispensation from the Standards Committee.
- 4.2 Under Section 81 of the Local Government Act 2000 and the Standards Committee (Further Provisions) (England) Regulations 2009, the Standards Committee has power to grant a dispensation to a Member with a prejudicial interest in certain circumstances:
- a) the transaction of business would otherwise be impeded because:
 - (i) more than 50% of the Members entitled to vote would not be able to; or
 - (ii) the number of Members prohibited from voting would upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting;
 - b) the Member has submitted to the Standards Committee a written request for a dispensation, explaining why it is desirable; and
 - c) the Standards Committee concludes, having regard to the above, the content of the application in (b) and any other relevant circumstances of the case, that it is appropriate to grant the dispensation.

Given the number of Members affected at the Area Committee (as set out in paragraph 2.1 above), the Committee will see that limb a) (i) above is satisfied, as is limb b) by virtue of the written applications (to be circulated later).

- 4.3 Members must decide, in accordance with c) above, whether it is *appropriate* to grant the dispensations in these circumstances. It is important that Members in

considering the matter should balance the public interest in preventing Members with prejudicial interests from taking part in decisions, against the public interest in decisions being able to be taken by a reasonably representative group of members of the Authority. Similar dispensations were granted by the Standards Committee to similarly affected Members of the Yorkshire Coast and Moors County Area Committee, on 2 February 2009, to enable them to speak, vote and be included within the quorum at Yorkshire Coast and Moors County Area Committee meetings when that Committee was determining an application submitted by Helredale Neighbourhood Council for the registration of a village green at Helredale Playing Field, Whitby. Those dispensations lapsed at the date of the local government elections in June 2009.

- 4.4 If the Standards Committee is minded to grant dispensations, it must consider the duration and scope of them. The applications (to be circulated) request that the dispensations be granted until the applications are determined or the date of the local government elections in 2013, whichever is the earlier.
- 4.5 Any dispensation granted will allow the Members concerned to fully participate in the specified matters, including speaking and voting upon them. The dispensations will be recorded in writing and kept with the relevant entries in the Register of Members' Interests.

5.0 CONCLUSION

- 5.1 Members are requested to consider whether it is appropriate to grant dispensations to the dual-hatted Area Committee Members listed in Appendix 1, who regard themselves as having a prejudicial interest in these matters which are next to be considered by the Area Committee on 1 October 2009.

6.0 RECOMMENDATIONS

- 6.1 That the Committee consider and determine the applications for dispensations by the County Council Members of the Yorkshire Coast and Moors County Area Committee listed at Appendix 1 to enable them to speak, vote and be included within the quorum at meetings of that Area Committee, when that Committee is determining applications for the registration of village greens at The Sunken Garden, St Nicholas Cliff/Marine Parade, Scarborough and at The Old Pool Site, Mulgrave Road, Whitby.
- 6.2 That, should Members be minded to grant the dispensations, the dispensations be granted until the applications are determined or the date of the local government elections in 2013, whichever is the earlier.

CAROLE DUNN
Monitoring Officer

Background documents:

Section 81 Local Government Act 2000
The Standards Committee (Further Provisions) (England) Regulations 2009
Public Minutes of Scarborough Borough Council Cabinet meetings

County Hall
NORTHALLERTON

14 September 2009

NYCC Standards Committee

21 September 2009

**Dispensation Applications – The Old Swimming Pool, Whitby and
The Sunken Garden, Scarborough****Applications for registration as a village green**

Name <i>(invited to apply)</i>	Committee	Application received?
1. BACKHOUSE, Andrew	Yorkshire Coast and Moors County Area C/tee	
2. BLACKBURN, John	Yorkshire Coast and Moors County Area C/tee	
3. CHATT, Bill	Yorkshire Coast and Moors County Area C/tee	
4. COCKERILL, Michael	Yorkshire Coast and Moors County Area C/tee	
5. JEFFELS, David	Yorkshire Coast and Moors County Area C/tee	
6. JEFFERSON, Janet	Yorkshire Coast and Moors County Area C/tee	
7. KENYON, Jane	Yorkshire Coast and Moors County Area C/tee	
8. MARSBURG, Pat	Yorkshire Coast and Moors County Area C/tee	
9. MARSDEN, Penny	Yorkshire Coast and Moors County Area C/tee	
10. PLANT, Joe	Yorkshire Coast and Moors County Area C/tee	
11. POPPLE, Peter	Yorkshire Coast and Moors County Area C/tee	
12. SIMPSON, Brian	Yorkshire Coast and Moors County Area C/tee	
13. TINDALL, Herbert	Yorkshire Coast and Moors County Area C/tee	

NORTH YORKSHIRE COUNTY COUNCIL

Guidance to Members seeking a Dispensation from the Standards Committee

1.0 Introduction

1.1 Under paragraph 10 of the Code of Conduct for Members, and in accordance with the supporting statutory Guidance, a Member with a personal interest in any business of the Authority also has a prejudicial interest if *all* the following conditions are met:

- a) the business is not exempt;
- b) the business affects the Member's financial position (or a regulatory matter in relation to them) or that of any person or body through whom the Member has a personal interest; and
- c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgment of the public interest.

1.2 Under paragraph 12 of the Code, a Member with a prejudicial interest in such business must withdraw from the room or chamber where a meeting is being held either after making representations (where appropriate and if s/he wishes to do so) or, in any other case, whenever it becomes apparent that the business is being considered at that meeting UNLESS s/he has obtained a dispensation from the Standards Committee.

2.0 Scope

2.1 Circumstances where a dispensation may be granted

2.1.1 Under Section 81 of the Local Government Act 2000 and The Standards Committee (Further Provisions) (England) Regulations 2009, the Standards Committee has power to grant a dispensation to a Member with a prejudicial interest in a matter, in certain circumstances (see below).

2.1.2 Any dispensation granted will allow the Member to fully participate in the matter, including speaking and voting upon it. Dispensations may also be granted for speaking only, as well as for speaking and voting. However, the Council's current Code of Conduct relaxed the provisions for restricting Members with a prejudicial interest from speaking, provided the public were also able to speak at that meeting. Therefore, the need to request a dispensation to speak only is likely now to be limited to circumstances where the public do not have the right to speak.

2.1.3 The law prescribes that the Standards Committee may grant a dispensation in the following circumstances:

- a) where the transaction of business of the Council would, but for the grant of any other dispensation in relation to that business, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because—
 - (i) the number of Members of the Council prohibited from voting on the business of the Council at a meeting exceeds 50% of those Members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business; or
 - (ii) the number of Members prohibited from voting on the business of the Council at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting;

The Standards Committee must ignore any dispensations which have already been given to others at the meeting to decide whether either of these criteria apply.

- b) the Member has submitted to the Standards Committee a written request for a dispensation, explaining why it is desirable; and
- c) the Standards Committee concludes, having regard to the above, the content of the application in (b) and any other relevant circumstances of the case, that it is appropriate to grant the dispensation.

2.2 **Criteria to be considered in respect of dispensation requests**

- 2.2.1 The Standards Committee will need to balance the public interest in preventing Members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of Members of the authority (Standards Board Guidance May 2007).
- 2.2.2 For dispensation requests under paragraph 2.1.3 (a) (ii), the Committee will also need to balance the prejudicial interest of the Member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the Member is unable to do so.
- 2.2.3 Other criteria to be considered in respect of dispensation requests are set out below.
- 2.2.4 Is the nature of the Member's interest such that allowing them to participate would not damage public confidence in the conduct of the Council's business?
 - a) it is unlikely that it would be appropriate to grant a dispensation to a Member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the Member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for Members on committees to be substituted by Members from the same political party.

- b) However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

2.2.5 Is the interest common to the Member and a significant proportion of the general public?

- a) For example, the Member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious Members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

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

- a) For instance, a Member might represent the Council on another public body (eg a police authority) and have particular expertise in the work of that body. Therefore it may be appropriate for that Member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the Member's expertise before making a decision which would benefit it financially.

2.3 **Restrictions on the granting of a dispensation**

2.3.1 A dispensation cannot be granted, in respect of participation in business, for more than four years.

2.3.2 Dispensations cannot be granted to allow:

- a Member to vote on a matter at a meeting of an Overview and Scrutiny Committee relating to a decision made by any body of which s/he was a member at the time the decision was taken; nor
- an individual Member of the Executive to exercise executive functions solely, where they are prohibited by the Code from doing so.

3.0 **Guidance to Members Requesting a Dispensation**

3.1 If a Member believes s/he has a personal interest in a matter which is also prejudicial s/he cannot take part and vote without a dispensation.

3.1.1 If either of paragraphs 2.1.3 (a) (i) or (ii) applies then a Member may wish to consider applying for a dispensation from the Standards Committee. In those circumstances it would be advisable to discuss the proposed application with either the Monitoring Officer (or any of her team) or the Principal Officer Democracy and Governance.

3.2 Requests for a dispensation should be made individually, using the form attached as Appendix 1, which is available from the Monitoring Officer or the Principal Officer Democracy and Governance. If the Member does not make an application

the Standards Committee cannot consider a dispensation to that Member. This is so even if several other Members are affected by the same issue. Should each such Member wish to receive a dispensation then they must each submit an application on their own behalf using the form.

4.0 **Completing the Application Form**

4.1 The Standards Committee must be satisfied that there is a reason for a dispensation ie that the number of Members prohibited from voting exceeds 50% of those entitled to vote or will upset the political balance of that meeting so as to prejudice the outcome of voting if a dispensation is not granted. They must also be satisfied that a Member has made an application in accordance with the Regulations. The Committee will then consider the content of the application and all the other circumstances of the case. In order for the Committee to properly consider these issues the Member should provide the following information:

- Details of the personal interest of the Member; if it involves the membership of another body, Members should outline the purpose of the body and its relationship, if any, with the County Council;
- Details of the decision or decisions in respect of which the Member will have a prejudicial interest;
- If appropriate, the date(s) of the meeting(s) and the item number(s) of any particular decision due for consideration;
- The name of the relevant Council Officer who usually advises Members about the matter under consideration;
- Members should indicate the length and scope of the dispensation being sought: a dispensation cannot be longer than four years and it can be limited to a particular decision or apply to a number of decisions relating to the same issue;
- Finally, the Member will need to indicate why he or she considers that a dispensation should be given.

5.0 **Submitting the Application**

5.1 Once completed, the form should be sent to the Monitoring Officer.

5.2 Democratic Services will then arrange for the Standards Committee to consider the application at its next meeting or, if the matter is urgent and will not wait until then, at a specially convened meeting of the Standards Committee.

5.3 The Member will be notified by Democratic Services of the date upon which the Standards Committee will consider the request.

6.0 Consideration of the Dispensation Request by the Standards Committee

- 6.1 At the appointed meeting, the completed application form will be considered by the Standards Committee, along with any other relevant information, in deciding whether or not to grant a dispensation to the Member.
- 6.2 The Standards Committee may seek information from the relevant Officer and may request the attendance of the Member to assist in understanding the nature of the relevant interest.
- 6.3 Once the Standards Committee has decided whether or not to grant a dispensation, the Monitoring Officer shall inform the Member as to the outcome of his/her application.

7.0 Recording a Dispensation

- 7.1 If the Standards Committee decides to grant a dispensation to the Member, then the Monitoring Officer will record, in writing, its existence, duration and nature.
- 7.2 The Monitoring Officer will ensure that a copy of the record is kept with the relevant Member's entry in the Register of Members' Interests.

8.0 Monitoring Dispensations

- 8.1 The Standards Committee will monitor the use made of dispensations granted by it.

9.0 Acting under a Dispensation

- 9.1 When acting under a dispensation granted to them by the Standards Committee, Members must at all times act, and appear to act, in the Council's best interests.

NORTH YORKSHIRE COUNTY COUNCIL

Request to the Standards Committee for a Dispensation

Name of Member seeking dispensation:

In respect of which meeting(s)?
(include dates, where possible)

In respect of what business? (If applicable, include full details of the agenda item or other matter)

NB: PLEASE NOTE that dispensations cannot be granted to allow:

- a Member to vote on a matter at a meeting of an Overview and Scrutiny Committee relating to a decision made by any body of which s/he was a member at the time the decision was taken; nor
- an individual portfolio holder to take executive decisions where they have delegated powers to do so but are prevented from taking the decision because of a prejudicial interest.

Name of the Relevant Officer: (Please indicate the name of the officer who usually presents reports on the matter for which a dispensation is sought).

Desired length of dispensation:days/weeks/months/years
(Please note the maximum length of a dispensation is four years)

Ground(s) for application: (Please tick the relevant box)

- (a) more than 50% of the Members entitled to vote affected:
- (b) the number of Members affected will upset the political balance of that meeting so as to prejudice the outcome of voting:

Details of your prejudicial interest:

Please set out full details of your personal interest in the business concerned and why you believe that interest to be prejudicial. Please continue on a separate sheet if necessary:

Reasons for seeking a dispensation:

Please set out full reasons why it is desirable for the Standards Committee to grant you a dispensation in respect of the above prejudicial interest. Please continue on a separate sheet if necessary:

PLEASE REMEMBER THAT WHEN ACTING UNDER A DISPENSATION, MEMBERS MUST AT ALL TIMES ACT, AND APPEAR TO ACT, IN THE COUNCIL'S BEST INTERESTS.

Signed:

Dated:

TO: **CAROLE DUNN**, Monitoring Officer