

NORTH YORKSHIRE COUNCIL
STANDARDS AND GOVERNANCE COMMITTEE

15 September 2023

Dispensation Request from Councillor Lunn

1.0 PURPOSE OF REPORT

- 1.1 To present to the Committee, for determination, a request from Councillor Cliff Lunn for a dispensation from the Standards and Governance Committee.

2.0 BACKGROUND

- 2.1 The Monitoring Officer was designated by the Council as Proper Officer to receive written requests by Members/voting Co-opted Members for a dispensation under section 33 Localism Act 2011 relieving them from either or both of the restrictions on participating in the discussion and vote on a matter where they have a disclosable pecuniary interest (DPI).
- 2.2 The power to grant dispensations to Members and voting Co-opted Members under the new ethical framework was delegated by the Council to this Committee, after consultation with the Independent Persons.
- 2.3 Power was also delegated to the Monitoring Officer to grant dispensations (after consultation with the Independent Persons) where the timescales are such that a Standards and Governance Committee meeting cannot be convened and where the Monitoring Officer has consulted every available Member of the Standards and Governance Committee, all of whom consent to the granting of the dispensation.

3.0 DISPENSATION PROCESS

- 3.1 Under the Localism Act 2011 and delegated power from the Council, where a written request has been made to the Monitoring Officer as Proper Officer, the Standards and Governance Committee has power to grant a dispensation to a Member from non-participation in relation to a disclosable pecuniary (and other) interests where the Committee concludes, after having had regard to all relevant circumstances, 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;
 - (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;
 - (c) granting the dispensation is in the interests of persons living in the authority's area;
 - (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 Executive; or
 - (e) it is otherwise appropriate to grant a dispensation.

- 3.2 The Committee must decide whether the application fulfils any of the criteria set out in paragraph 3.1 and, if so, whether it is appropriate to grant the dispensation in the circumstances, after balancing the public interest in preventing a Member with an interest from taking part in Council business, against the public interest in the relevant constituents not being disenfranchised and their views being able to be put forward on the business in question.
- 3.3 If the Standards and Governance Committee is minded to grant a dispensation, it must consider the scope (for example whether the dispensation will allow the Member to speak, discuss and vote on the item or speak and discuss only) and the duration of it. Dispensations may be granted for a maximum period of 4 years.
- 3.4 Any dispensation granted will be recorded in writing.

4.0 DISPENSATION REQUEST BY COUNCILLOR LUNN

- 4.1 Councillor Lunn emailed the Monitoring Officer on 29 August 2023 to request a dispensation from the Standards and Governance Committee, to enable him to speak and vote on a planning application [ZG2023/0551/outm].
- 4.2 The planning application is an application for proposed residential development for development of land at Leeds Road for 140 houses. Councillor Lunn lives within 250 yards of the proposed development. He informs the Monitoring Officer that he has attended meetings set up by the developer for the people of the village and is aware of the unpopular nature of the development but has not put in any objection nor made any negative comments about the development. He has given advice to his neighbours as to planning considerations and what is a valid objection and what is not but does not feel he has done any action which would indicate pre-determination.
- 4.3 Councillor Lunn's home address is registered in his register of interests and is therefore a Disclosable Pecuniary Interest. If there is an item of business due to be considered at a meeting which **directly relates** to that interest, then Councillor Lunn would need to declare the existence and nature of his interest to the meeting, not participate in any discussion or vote on the matter and withdraw from the meeting room for that item unless he has a dispensation.
- 4.4 If the business doesn't directly relate to the interest (the property), but could more indirectly **affect** the Councillor's finances or wellbeing, then Councillor Lunn may have a Non-Registrable Interest in the agenda item. He would need to declare the existence and nature of his interest to the meeting, and consider whether the matter affects his financial interest/wellbeing more than it affects that of the majority of inhabitants of the division affected and, if so, whether a reasonable member of the public knowing all the facts would believe it would affect Councillor Lunn's view of the wider public interest:
- if yes, then Councillor Lunn may speak if the public can but must otherwise take no part in the discussion or vote and must leave the meeting room unless he has a dispensation;
 - if no, the matter does not so affect financial interest/wellbeing, then he can speak and vote in the usual way after declaring the interest.
- 4.5 The LGA guidance on the code of conduct states:

Disclosable Pecuniary Interests

... The Localism Act uses the phrase ... disclosable pecuniary interest in any matter to be considered or being considered at the meeting ...

*This wording has led to some confusion as to what circumstances would lead to the need to declare a DPI. The Explanatory Notes to the Localism Act say that section 31 of the Act “requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting or if acting alone, where any matter to be considered **relates to** their interest. ... It prohibits a member from participating in discussion or voting on any matter **relating to** their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations).” [our emphasis].*

*This means you have a Disclosable Pecuniary Interest (DPI) in a matter when the matter being discussed **directly relates** to your registered interest or that of your partner, rather than simply affecting it.*

For example, if you have registered 1 Acacia Avenue as your address, you would have a DPI if you put in a planning application for 1 Acacia Avenue, or if the whole of Acacia Avenue was being considered for a Resident Parking Zone.

*You would not have a DPI if 3 Acacia Avenue had put in a planning application as the matter does **not directly relate** to your registered interest. You may however have a non-registerable interest (see below) as the application may indirectly affect your property...*

Non-registerable interest

*... A **Non-registerable Interest** arises where the interest is that of yourself or your partner which is not a DPI or of a relative or close associate (see definition below).*

As a councillor you are not expected to have to register the interests of your relatives or close associates but under the Code you are expected to declare them as and when relevant business occurs which affects their finances or wellbeing. The Code says you should not participate in the relevant business in two circumstances:

- ***a.** when a matter directly relates to that interest. Or*
- ***b.** when a matter affects that interest to a greater extent than it affects the majority of inhabitants and*
 - *a reasonable member of the public would thereby believe that your view of the public interest would be affected*

For example, under a) if your son has submitted an application for a licence to open a bar, the matter directly relates to your relative. You must not take part in any discussion or vote on the matter.

For example, under b) there has been an application made to build several units of housing on a field adjacent to your business partner’s home. It is not their application, but they will be more affected by the application than the majority of people so again you would be expected to declare the interest and withdraw.

Similarly, an application for the property next door to you does not directly relate to your property so it is not a DPI, but you would instead need to declare a Non-Registerable Interest.

In all of these cases you can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. If the public are not allowed to address the meeting on that item, you would need if necessary, to get another councillor who did not have an NRI to make any relevant case or to represent the wider views of constituents.

As with DPIs you can be granted a dispensation (see below).

What is the difference between ‘relates to’ and ‘affects’?

Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest.

‘Affects’ means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

- 4.6 Given the above guidance, it is unlikely that being in the vicinity of the development would mean that the planning application “directly relates to” the Councillor’s registered interest. It is more likely to form a Non-Registrable Interest with the potential to affect his financial interests or wellbeing, given his home’s proximity to the proposed development and the potential for the public to think his views would be affected. In such circumstances the Councillor is able to apply for a dispensation from the Committee.
- 4.7 Should the Committee be minded to consider granting a dispensation, the relevant grounds may be:
- (c) granting the dispensation is in the interests of persons living in the authority’s area;
 - (e) it is otherwise appropriate to grant a dispensation.
- 4.8 The Committee is therefore requested to consider and determine the dispensation request from Councillor Lunn to enable him to speak, vote and be included in the quorum at meetings when planning application ZG2023/0551/outm is to be considered.

5.0 FINANCIAL IMPLICATIONS

- 5.1 There are no significant financial implications arising from this report.

6.0 LEGAL IMPLICATIONS

- 6.1 The legal implications are set out in the body of this report.

7.0 ENVIRONMENTAL/CLIMATE CHANGE IMPLICATIONS

- 7.1 There are no significant environmental/climate change implications arising from this report.

8.0 EQUALITIES IMPLICATIONS

8.1 There are no equalities implications arising from this report.

9.0 CONCLUSION

9.1 That the Committee determines the submitted application by Councillor Lunn for a dispensation.

10.0 RECOMMENDATIONS

10.1 That the Committee considers and determines the application for a dispensation by Councillor Lunn.

10.2 That, should the Committee be minded to grant the dispensation requested, the Committee determine the scope, grounds and duration of the dispensation.

BARRY KHAN

Assistant Chief Executive Legal and Democratic Services and Monitoring Officer

Background Papers:

- The Localism Act 2011

County Hall
NORTHALLERTON

30 August 2023