

## **ITEM 6                    Dispensations for Code of Conduct Interests**

Report of the Head of Legal and Democratic Services

### **Recommended:**

- 1.     That all Members of Test Valley Borough Council shall be granted the dispensation in respect of the Code of Conduct Interest set out in Annex 1 to the report.**
  
- 2.     That authority to grant dispensations to Members of Test Valley Borough Council in respect of Code of Conduct Interests be delegated to the Head of Legal and Democratic Services in consultation with the Chairman of the General Purposes Committee in accordance with paragraph 5.5 of the report**

### **SUMMARY:**

This report follows receipt of a senior barrister's advice regarding

- (1) Members' disclosable pecuniary interests pursuant to the provisions of the Localism Act and
- (2) the interpretation of the Council's Members' Code of Conduct and its application in the context of decisions to taken by Council with regard to the progress of the Revised Local Plan.

The legal advice obtained confirms

- All Members who have an interest in land, including their own homes, has a disclosable pecuniary interest in the consideration of the Revised Local Plan;
- All Members who have close friends or family who have an interest in land or other pecuniary interests that would be affected by the Revised Local Plan have a Code of Conduct Interest.
- The Head of Legal and Democratic Services has authority to issue a dispensation to Members in respect of disclosable pecuniary interests in circumstances specified in legislation. The Head of Legal and Democratic Services has issued a dispensation to all Members accordingly.
- The General Purposes Committee has authority to issue a dispensation to Members regarding Code of Conduct Interests. The General Purposes Committee is advised that it may issue such a dispensation in respect of the consideration of the Revised Local Plan.
- The Head of Legal and Democratic Services will provide further advice to the Committee and Council as required regarding necessary amendments to the Members' Code of Conduct.

## **1 Introduction**

- 1.1 The Head of Legal and Democratic Services has sought advice of a senior barrister regarding Members' disclosable pecuniary interests pursuant to the provisions of the Localism Act and regarding the interpretation and application of the Members' Code of Conduct, in the context of the Revised Local Plan and the decisions which fall to be made by Council.
- 1.2 The advice obtained proposes particular steps to be taken as more fully explained below in order that those decisions of Council might be taken without breaching the Members Code of Conduct and in addition protecting against allegations of bias against any Member.

## **2 Background**

- 2.1 The Members' Code of Conduct ("the Code") was adopted by Council on 4 July 2012. The scope and content of the Code was agreed in consultation with Members having regard to the requirements of the Localism Act 2011, the dismantling of a national standards board, and Members' own concern that consideration should be given to interests which might arise in addition to those matters described in legislation as "disclosable pecuniary interests" ("dpi"). Those additional interests appear in the Code at Part 3: Interests. Paragraph 2: Code of Conduct Interests ("CoCi").
- 2.2 A dpi is as defined in the legislation. It is a pecuniary interest - an interest in land, employment, a contract with the Council - which is held by the Member or Member's spouse or partner.
- 2.3 A CoCi is defined in the Code (unlike a dpi, it is an interest unique to TVBC) and is a pecuniary interest, which whilst not a dpi will...."affect you...or relate to or affect a relevant person as defined in the Regulations, a member of your family or a close friend".
- 2.4 The Code requires the declaration of both dpi and CoCi where such interests are interests "in any matter to be considered". In the case of a dpi, the Code requires that the Member must leave the meeting before any discussion or vote. Furthermore, a Member with a dpi cannot make a statement to the meeting. A Member with a CoCi must also leave the room, but may first make a statement as if a member of the public.
- 2.5 The Localism Act provides that breach of the Code does not invalidate the decision. Bias, of course, will invalidate a decision of the Council should there be a successful challenge through the courts. The failure to provide transparency around decisions in which a reasonable member of the public might consider a Member to have an interest – whether for themselves or others- would give rise to an allegation of bias. However, by careful application of the Code, Members might ensure that they are seen to act without bias and consequently protect the decisions taken by Council or other committees against challenge through the Courts for reason of common law bias.

- 2.6 The Head of Legal and Democratic Services instructed the senior barrister who currently advises the Council on the progress of the Revised Local Plan (“RLP”). The barrister was asked to advise upon the application of the legislation and the Code to the Council’s function as a planning authority and more particularly, the consideration of the “RLP”.
- 2.7 The advice of the barrister confirms an interpretation of the Code in law which appears to restrict most if not all Members in their participation in this decision- making process and so obstruct the Council in the discharge of this key function. The barrister advised:
- 2.7.1 Disclosable Pecuniary Interests:
- (a) All Members have a dpi in any consideration of the RLP simply because of their ownership or other legal interest in their homes in the Borough.
  - (b) It would be hard to say that Members do not have a dpi in the matter of the RLP as a whole.
  - (c) In view of the inability of the Council to transact business having regard to the consequence of all Members having a dpi in the RLP, all Members could be given a dispensation (see Annex 1)
- 2.7.2 Code of Conduct Interests:
- (a) All Members with close friends and family, who own property or operate businesses in the Borough which are affected by the RLP have a CoCi.
  - (b) The Code provides no measure or qualification as to how great- or slight- that effect need be to qualify as an interest.
  - (c) As with dpi, the Council would be unable to transact business (it being likely that all Members have close friends and family living within the Borough, with homes and/or businesses). Consequently Members could be given a dispensation
- 2.7.3 The barrister was particularly concerned that all Members should have regard to the law of bias. In short, the law requires that a Member must not participate in any matter in which an ordinary member of the public might reasonably believe that a Member will act to the advantage or disadvantage of a particular person or other party; or that a Member has set aside his/her judgement of what lies in the public interest in order to achieve some other objective.
- 2.7.4 Breach of the law relating to bias will make the Revised Local Plan susceptible to Judicial Review. To participate in such circumstances is plainly unacceptable and each Member must consider their own position very carefully.
- 2.7.5 The barrister advised that, whilst the law as it related to the Code and the law of bias were not the same, the failure on the part of Members to consider the Code carefully and to make relevant declarations (subject to dispensations), could only add weight to an allegation of bias and so render the decision of Council vulnerable to challenge in the courts.

### **3 Corporate Objectives and Priorities**

- 3.1 The content and purpose of this report does not relate to a single Corporate Objective but rather underpins the integrity of the administrative process which is essential to the maintenance of integrity and authority.

### **4 Consultations/Communications**

- 4.1 The nature of this report does not require consultation to take place. However the report and the consequent resolutions will be passed to all Members and their comment invited, particularly regarding the future revision of the Code in light of the barrister's advice.

### **5 Option**

- 5.1 The Council has no option but to issue a dispensation in respect of the disclosable pecuniary interests of all Members. In the event that the Council were to fail to issue a dispensation, Members would be at risk of those sanctions specified in the Localism Act.
- 5.2 The Head of Legal and Democratic Services has delegated authority to issue dispensations to Members of the Council pursuant to Section 33(2)(a) and (b) of the Localism Act. In order to facilitate the transaction of business the Head of Legal and Democratic Services has issued dispensations for each Member (as attached at Annex 1).
- 5.3 Similarly the Council has no option but to issue a dispensation in respect of the Code of Conduct Interests save that such dispensations might be limited in their scope. Without a dispensation for a Code of Conduct Interest, all Members with such interests would be restricted in their participation such that, whilst they could speak, they could not vote. Consequently, the Council would be unable to transact its business, more particularly to make decisions with regard to the RLP.
- 5.4 The Head of Legal and Democratic Services advises that such a dispensation should be limited to cover only those interests which arise from the residential arrangements of close friends and family and which are affected to no greater an extent than the majority of residents of each Member's particular ward (as attached at Annex 1).
- 5.5 In addition to the grant of a dispensation by this Committee it is recommended that the Head of Legal and Democratic Services in consultation with the Chairman of the General Purposes Committee shall have delegated authority to grant dispensations in respect of Code of Conduct Interests which go beyond the ambit of para 5.4 above. It is recommended that such delegated authority is appropriate in circumstances where it would be impracticable to convene a committee and any such dispensation will be reported to the next General Purposes Committee.

- 5.6 Those Members, whose friends and family have interests which extend to larger land holdings or commercial interests, would still be required to declare a Code of Conduct Interest if they wished to participate in the meeting.
- 5.7 Members will be required to consider the issue of bias, regardless of the grant of any dispensation. If a Member considers that a member of the public might reasonably believe that Member to be biased, the Member is advised to seek the guidance of the Head of Legal and Democratic Services before attending the meeting.

## **6 Option Appraisal**

- 6.1 If the Committee does not issue dispensations in accordance with the recommendations of this Report, Council will not be able to take decisions on the further progress of the RLP without Members being subject to complaints to the Ethics Committee for breach of the Code of Conduct or otherwise maladministration. Members would also be more vulnerable to allegations of bias.
- 6.2 The consideration of this matter by this Committee and all Members and the evaluation of Member's interests, reinforces the necessary transparency and integrity that is required in the administration of local democracy.

## **7 Resource Implications**

- 7.1 There are none save the resource engaged in convening this Committee and requisite administration in advising all Members appropriately and issuing dispensations accordingly.

## **8 Legal Implications**

- 8.1 The legal implications are as set out above.

## **9 Other Issues**

- 9.1 Wards/Communities Affected
- 9.1.1 All wards and communities in the Borough are affected

## **10 Conclusion**

- 10.1 Members are required to have regard to the Members Code of Conduct when attending meetings and to declare interests as appropriate. The ownership or tenancy of a home, either in the name of the Member, or Member's partner or spouse will constitute a disclosable pecuniary interest. Furthermore, Members who have family or close friends in the Borough and who also own their homes or occupy subject to a tenancy, will have a Code of Conduct Interest when considering the Revised Local Plan. Accordingly, this report recommends the grant of dispensations in order to facilitate the transaction of Council business and further delegation to permit the Head of Legal and Democratic Services in consultation with the Chairman of the General Purposes Committee to grant dispensations in respect of Code of Conduct Interests.

Background Papers (Local Government Act 1972 Section 100D)

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:

1

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Report to:

General  
Committee

Purposes

Date:

6 January 2014