

Report of the City Solicitor

Report to the Chief Executive

Date: May 2017

Subject: Application for dispensation under Section 33 of the Localism Act 2011

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: n/a Appendix number: n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. In accordance with the Localism Act 2011 and the Members Code of Conduct adopted by Leeds City Council, Members are prevented from participating in the discussion in relation to any matter in which they have a disclosable pecuniary interest.
2. In certain circumstances this prohibition prevents Members from speaking in an individual capacity in relation to a matter which directly affects them, when a member of the public in the same circumstances would have the right to speak.
3. The Members listed on the attached schedules now make application to the Chief Executive to grant a dispensation to enable Members affected in this way to participate in the decision making process in relation to the matter to the same extent as any other member of the public would be entitled.

Recommendations

4. The Chief Executive is recommended to grant a dispensation, for a period of four years, to those Leeds City Councillors who are signatories to the attached application Schedule from the restrictions in section 31(4)(a) to take part in the discussion of a matter in which they have a disclosable pecuniary interest to allow them to make representations at a meeting where members of the public have the same entitlement (e.g. to allow a Councillor who is making an application for planning permission to attend to make representations at a meeting of the Council's Planning Committee which is to hear the matter in the same way as a member of the public.)

Purpose of this report

- 1.1 This report seeks a dispensation for the Members, listed in the Schedule attached, with a disclosable pecuniary interest in a matter to enable them to participate in the decision making process in relation to the matter to the same extent as any other member of the public would be entitled (e.g. to allow a Councillor who is making an application for planning permission to attend to make representations at a meeting of the Council's Planning Committee which is to hear the matter in the same way as a member of the public.) The dispensation will last for a period of four years.

2 Background information

- 2.1 All elected Members are obliged to notify the Monitoring Officer of their disclosable pecuniary interests so that they can be entered into the Register of Interests. Furthermore, Members must not take part in any decision in which they have a disclosable pecuniary interest.
- 2.2 On 30th October 2013 the Chief Executive granted a dispensation enabling Members to take part in the discussion in relation to any matter in which the public have a like right to participate, mirroring a provision contained in the 2007 Code of Conduct. Similar dispensations were granted in 2014, 2015 and 2016 for those Members newly elected to Leeds City Council in those years to terminate on the same date as the dispensation for existing members. All dispensations are due to expire on 29th October 2017.

3 Main issues

- 3.1 The prohibition on Members involvement in decision making where they have a disclosable pecuniary interest prevents their participation under any circumstances. This would include circumstances where any other Member of the public would have the right to attend a committee in order to make representations for example in relation to a planning application which they are making or to which they wish to object, or in relation to a licensing matter.
- 3.2 It is suggested that this limitation places unjust discrimination upon Members because they hold public office, and that as such it would be appropriate to set this limitation aside in order to permit Members to make representations where appropriate and where the public hold the same rights.
- 3.3 It is not suggested that the dispensation should extend to giving Members the right to vote in relation to matters in which they have a disclosable pecuniary interest as the public do not share this right.

Application for dispensation

- 3.4 Section 31(4) of the Localism Act 2011 sets out that where a Member is present at a meeting of the authority and has a disclosable pecuniary interest in any matter to be considered, they may not:

- Participate, or participate further, in any discussion of the matter at the meeting, or
- Participate in any vote, or further vote, taken on the matter at the meeting.

3.5 If a Member fails to comply with these requirements, they would potentially commit a criminal offence.

3.6 However, a relevant authority may, following a written request made to the proper officer (the Monitoring Officer) by the Members concerned, grant a dispensation relieving the Members from either or both of the restrictions set out in Section 31(4). The Schedules attached to this report are an application from 96 Leeds City Councillors requesting a dispensation in relation to this issue.

3.7 In Leeds the responsibility for granting dispensations has been delegated to the Head of Paid Service. The Head of Paid Service may grant a dispensation only if certain conditions are met, the first four conditions relate to the impact of the dispensation on political balance within the authority or the carrying out of the authority's business; however the last condition is that the authority considers it otherwise appropriate to grant a dispensation.

3.8 The dispensation must specify the period for which it has effect, which must not be greater than four years. It is proposed that in this case a dispensation is granted to expire four years from the date on which it is granted.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 According to Article 12 of the Council's Constitution, the Head of Paid Service must consult the Chair of the Standards and Conduct Committee before determining requests for dispensations. The Chair of the Standards and Conduct Committee has been consulted on this matter by the Deputy Monitoring Officer, and agrees that it is appropriate to grant a dispensation in the circumstances.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There are no issues for equality and diversity or cohesion and integration.

4.3 Council policies and City Priorities

4.3.1 There are no implications for Council policies or City Priorities.

4.4 Resources and value for money

4.4.1 There are no implications for resources or value for money.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The legal implications on this report are set out in section 3.

4.6 Risk Management

- 4.6.1 There is a risk that if Members participate in the discussion of a matter in relation to which they have a disclosable pecuniary interest they have a greater ability to influence the views of the relevant committee because of their shared position as Members. However, it is felt that by limiting the dispensation to allowing participation in the discussion but not the vote, and only to the extent that the public share the right to involvement, this risk is minimised.

5 Conclusions

- 5.1 In accordance with the Localism Act 2011 and the Members Code of Conduct adopted by Leeds City Council, Members are prevented from participating in the discussion in relation to any matter in which they have a disclosable pecuniary interest.
- 5.2 In certain circumstances this prohibition prevents Members from speaking in an individual capacity in relation to a matter which directly affects them, when a member of the public in the same circumstances would have the right to speak.
- 5.3 It is suggested that a dispensation should be granted to enable Members affected in this way to participate in the decision making process in relation to the matter to the same extent as any other member of the public would be entitled.

6 Recommendations

- 6.1 The Chief Executive is recommended to grant a dispensation, for a period of four years, to those Leeds City Councillors who are signatories to the attached application Schedule from the restrictions in section 31(4)(a) to take part in the discussion of a matter in which they have a disclosable pecuniary interest to allow them to make representations at a meeting where members of the public have the same entitlement (e.g. to allow a Councillor who is making an application for planning permission to attend to make representations at a meeting of the Council's Planning Committee which is to hear the matter in the same way as a member of the public.)

7 Background documents¹

- 7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.