

AUDIT AND GOVERNANCE COMMITTEE – 16 JANUARY 2013

DISPENSATIONS AND THE SETTING OF THE COUNCIL'S BUDGET

Report by the County Solicitor & Monitoring Officer

Introduction

1. The Audit & Governance Committee has the power to grant dispensations to councillors who might otherwise be unable to participate in decision-making by virtue of a disclosable pecuniary interest in the matter under consideration. Failure to register a disclosable pecuniary interest “without reasonable excuse” is a criminal offence under Section 34 of the Localism Act 2011.
2. This report addresses the question as to whether a dispensation is required for County Councillors in the setting of the Council's budget where a member holds “any beneficial interest in land which is within the area of the relevant authority” (Relevant Local Authorities (Disclosable Pecuniary Interests) Regulations 2012). I conclude that no such dispensation is required because, in the view of the Monitoring Officers of all of Oxfordshire's principal councils, the holding of such a beneficial interest is not a disclosable pecuniary interest under the Localism Act 2011.

Statutory provisions

3. The Relevant Local Authorities (Disclosable Pecuniary Interests) Regulations 2012 list “any beneficial interest in land” in the authority's area as a disclosable pecuniary interest. Section 30 of the Localism Act 2011 provides that a member must notify the authority's monitoring officer of any disclosable pecuniary interest which that person has at the time of notification.
4. Under the Council's Code of Conduct, a councillor who has a disclosable pecuniary interest in a matter must not discuss or vote on the matter at a meeting of the Council and must withdraw from the room.
5. However, Section 33 of the Localism Act 2011 enables the Council to issue a dispensation from the restrictions at Section 31(4) and allow a councillor to:
 - a. participate, or participate further, in any discussion of the matter at the meeting(s); and/or
 - b. participate in any vote, or further vote, taken on the matter at the meeting(s).
6. If a dispensation is granted, the councillor may remain in the room where the meeting considering the business is taking place and if the dispensation allows, they may also vote.

7. Under the former Code of Conduct which has now been abolished by the Localism Act 2011, councillors had personal interests in any matter which might have “affected” or “related to” their land. This is no longer the case for ‘disclosable pecuniary interests’. Rather, a councillor now has a disclosable pecuniary interest only when the subject matter concerns their “beneficial interest in land”. When the budget is being set, this decision contributes to the setting of the precept. However, the reference point for this is all properties within the respective bands as opposed to any individual one. While under the former Code, express dispensation was arguably needed, it is considered that this is no longer the case.

No dispensation required - rationale

8. While the setting of a precept may affect the charge payable on a property, it does not affect the value of the property in question. It is also the case that the legislation could have been drafted specifically to require dispensation had this been the intention behind the Localism Act requirements.
9. There is no national consensus on this matter. At parish and town council level, for instance, the National Association of Local Councils has advised local councils that a disclosable pecuniary interest does arise. However, the Monitoring Officers of Oxfordshire’s city and district councils have advised local councils in their area that they do not agree with this view and that a disclosable pecuniary interest does not exist in this case.
10. In the absence of any definitive national guidance, which has not been forthcoming, it is for each local authority to determine its own approach. I therefore ask the Committee to consider my advice that a dispensation is not necessary because a disclosable pecuniary interest does not arise in the setting of the Council’s budget by virtue only of a member holding a beneficial interest in land within Oxfordshire.
11. Where Monitoring Officers have advised their members that no disclosable pecuniary interest arises in these circumstances, members would in any case be able to demonstrate that they had “reasonable excuse” for not having declared the interest.
12. Consequently, it is my intention to write to all County Councillors to advise them that no disclosable pecuniary interest exists with regard to the setting of the Council’s budget by virtue only of a member holding a beneficial interest in land within the Council’s area.

RECOMMENDATION

13. **The Committee is RECOMMENDED to consider the advice in this report and to agree that no dispensation is required with regards to the setting of the Council budget and that County Councillors be advised accordingly.**

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County Solicitor and Monitoring Officer

Background papers:

The Localism Act 2011

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

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January 2013