



City of Westminster Standards Committee

Date: 11 August 2010

Classification: For General Release

Title: Applications for Dispensation from the Members' Code of Conduct

Report of: Head of Legal Services

Wards Involved: None

Policy Context: Management of the Council

Financial Summary: There are no financial implications

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1. Executive Summary

- 1.1 This report sets out details of formal applications for dispensations from the City Council's Members' Code of Conduct received from Members due to sit on the Planning Applications Sub-Committee on Thursday 12 August 2010. The Standards Committee is asked to consider the applications in accordance with the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 which are set out in paragraph 3.3 of the report.
- 1.2 The Planning Applications Sub-Committee on 12 August 2010 will have before it an application in respect of 47 Devonshire Mews South, to which Mrs Harvey Marshall, wife of Councillor Harvey Marshall has made an objection. The Chief Whip has advised that the majority of Members of the Majority Party would have to declare a prejudicial interest in that they know Councillor Harvey Marshall and his wife and may regard them as a "close associate" for the purposes of the Code of Conduct. As a result of this the Majority Party Members who are due to consider the application were asked to consider making an application to the Standards Sub-Committee for a dispensation.
- 1.3 Applications for dispensations have been received from Councillors Alan Bradley, and Heather Acton in respect of the planning application relating to 47 Devonshire Mews South. Councillor Rachael Robathan, the other Majority party Member due to sit has been asked to consider making an application but at the time of writing this report she is on holiday and no application has been received. If an application is received from Councillor Robathan details will be tabled at the meeting of the Standards Sub-Committee.

- 1.4 The Members referred to in 1.3 above have also requested dispensations in respect of the planning application relating to 2 Cross Keys Close, to which Councillor Jonathan Glanz made an objection in a private capacity. This application, originally due to be considered by the Planning Applications Sub-Committee on 12 August 2010, has subsequently been dealt with by Planning Officers under delegated powers and will not be submitted to a Planning Applications Sub-Committee. Dispensations relating to this planning application will therefore no longer be required by Members and the Standards Sub-Committee is asked not consider this part of the applications.
- 1.5 The Standards Committee, on 14 July 2009, agreed a protocol, which was in line with guidance issued by the Standards Board. The protocol is attached as Appendix B.

2. Recommendations

- 2.1 That the Sub-Committee decide whether to grant a dispensation in the following form:
- (a) That Councillors Alan Bradley and Heather Acton be granted a dispensation to speak and vote on the planning application in respect of 47 Devonshire Mews South at the Planning Applications Sub-Committee on 12 August 2010 and at any other meeting(s) at which the application is considered, notwithstanding that Councillor Harvey Marshall and Mrs Marshall may be regarded as a “close associate” for the purposes of the Members’ Code of Conduct, subject to them making the statement at the meeting of the Planning Applications Sub-Committee on 12 August 2010 set out in paragraph 1.5 of the main report.
 - (b) That this dispensation shall expire on 11 November 2010.

3. Background

- 3.1 Under paragraph 8(2) of the Members’ Code of Conduct a Member has a personal interest in any business of the authority where:

“a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of:

- (i) (in the case of authorities with electoral divisions or wards) other council taxpayers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision”.

A relevant person includes a member of the Councillor’s family or a “close associate”.

- 3.2 Under paragraph 9(1) of the Code a member with a personal interest in a matter must disclose the existence and nature of the interest at the meeting at which the matter is considered. If the interest is “prejudicial” then, under paragraph 12 the member must also withdraw from the meeting room whilst the matter is under consideration. A “prejudicial” interest is defined in paragraph 10 of the Code as:

“...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 your judgement of the public interest.”

3.3 The Standards Sub-Committee has the power to grant a dispensation to a member(s) in the following circumstances:

- a. The transaction of business of the authority would, 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 authority that are prohibited from participating in the business of the authority exceeds 50% of those members that are entitled or required to so participate; or
 - ii. The authority is not able to comply with any duty which applies to it under section 15 (4) of the Local Government and Housing Act 1989 (this is the duty to maintain political balance on the Council's Committees);

(NB: The provision in (ii) above does not apply).

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

3.4 The grounds for a dispensation to be considered exist under paragraph 1.3 (a) (i) above.

3.5 The formal applications for dispensations from Councillors Bradley and Acton are attached as Appendix A. It is for the Standards Sub-Committee to formally consider the applications in accordance with the regulations set out in paragraph 1.3 above. In the event of the Standards Sub-Committee wishing to grant the dispensations it is suggested that it be subject to the Members concerned making the following statement at the meeting of the Planning Applications Sub-Committee on 12 August 2010.

I (Councillor Alan Bradley and Heather Acton) should declare an interest in respect of the planning application relating to 47 Devonshire Mews South since I know Councillor Harvey Marshall and Mrs Marshall and they may be regarded as close associates of mine within the meaning of the Members Code of Conduct. I should also say that I know them solely through my membership of the City Council and political activities and they are not very close associates. I am satisfied that I can deal with the applications wholly objectively. In the circumstances, and subject to me making this declaration, the Standards Sub-Committee on 12 August 2010 agreed to grant a dispensation to allow me to speak and vote on the application.

4. Legal Implications

- 4.1 The legal position is set out in the body of the report and guidance is given in paragraph 2.2. All the provisions of the City Council's Members' Code of Conduct are "mandatory provisions".
- 4.2 In determining any applications for a dispensation, the Standards Sub-Committee is likely to want to satisfy itself that the Members in question, though concerned that they may be regarded as "close associates" for the purposes of the Code of Conduct and also that members of the public might feel that the friendship would affect their judgement of the public interest, that in fact any association is not so close as to have that result. It follows, therefore, that any application for a dispensation should clearly set out the extent of contact with the Councillor so that a proper judgement can be made by the Committee. Of particular relevance, it is suggested, is the extent to which there is social contact outside of the business of the City Council and the Conservative Party. The Committee, it is assumed, is much more likely to grant a dispensation if all the social contact arises from the business of the Council or the Conservative Party, rather than independently of such business.
- 4.3 The Standards Committee is also required to ensure that:
- a. The existence, duration and nature of any dispensation is recorded in writing; and
 - b. That such record is kept with the register of interests established and maintained under Section 81 (1) of the Act 2000.
- 4.4 It is suggested that the dispensation should be for 3 months duration. If granted, the Head of Legal Services will place a copy of the Sub-Committee's decision with the register of interests to satisfy the above requirement.

If you have any questions about this report, or wish to inspect one of the background papers, please contact Naomi Stauber, 0207 641 2341, email: nstauber@westminster.gov.uk

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1972
BACKGROUND PAPERS.**

- Guidance issued by Standards Board
- Email from Planning Service advising of the submission application for which conflicts of interest may arise.