

ETCHINGHAM PARISH COUNCIL

15th November 2012

Reviewed and updated 17th May 2018

Etchingham Parish Council – Code of Conduct for Members - Dispensations

Introduction:

The Parish Council, in accordance with the requirements of the Localism Act 2011, and subsequent guidance, adopted a Code of Conduct at its meeting on 19th July 2012.

The Code of Conduct provides in Part 2 at paragraphs 8(3) and 8(5) what are a Councillors personal interests and pecuniary interests.

In Part 3, Registration of Interests, paragraph 15 provides information and guidance in respect of Dispensations. Reference is also made to Dispensations in Part 2 paragraph 12 (1) (a) (ii).

Members have previously been circulated with NALC Legal Topic Note LTN 80 April 2012, the SALC/SCAPTC Legal Advice Note 26 (June 2012) and most recently the Openness and Transparency on personal interests – A guide for councillors issued by the Department for Communities and Local Government (August 2012)

The guidance given in the above documents in respect of Dispensations is as follows:-

LTN80 paragraph 30 – Section 33 of the 2011 Act permits a member or co-opted member of a parish council with a disclosable pecuniary interest to submit a written request to the proper officer at the parish council for the parish council to grant a dispensation to relieve him/her of the restrictions in s. 31(4), namely to participate in a discussion or vote on a matter in which he/she has a disclosable pecuniary interest. A parish council may grant a dispensation if having regard to all relevant circumstances, it considers 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) Granting a dispensation is in the interests of persons living in the authority's area;*
- c) It is otherwise appropriate to grant a dispensation.*

SALC/SCAPTC Legal Advice Note 26 paragraph 25 – it is recommended that only full Council should have the power to grant a dispensation upon written application.

Openness & Transparency on personal interests – page 6 ‘When and how can I apply for a dispensation?’ – The rules allow your council or authority in certain circumstances to grant a dispensation to permit a member to take part in the business of the authority even if the member has a disclosable pecuniary interest relating to that business. These circumstances are when the council or authority considers that :

- Without the dispensation so great a proportion of the council or authority would be prohibited from participating in that business as to impede the council's or authority's transaction of that business,*

- *Without the dispensation the representation of different political groups dealing with that business would be so upset s to alter the likely outcome of any vote,*
- *The granting of the dispensation is in the interests of people living in the council's or authority's area,*
- *Without the dispensation each member of the council's executive would be prohibited from participating in the business, or*
- *It is otherwise appropriate to grant a dispensation*

If you would like your council or authority to grant you a dispensation, you must make a written request to the officer responsible for handling such requests in the case of your councillor authority.

Localism Act 2011 – Section 33

Dispensations from section 31(4)

(1) A relevant authority may, on written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section 31(4) in cases described in the dispensation.

(2) A relevant authority may grant a dispensation under this section only if, after having regard to all relevant circumstances, the authority –

a) Considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of business.

b) Considers that 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) Considers that granting the dispensation is in the interests of persons living in the authority's area

d) If it is an authority to which Part1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

e) Considers that it is otherwise appropriate to grant a dispensation.

(3) A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.

(4) Section 31(4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section.

Register of Interest:

Members will need to give consideration to their declarations of interest, as recorded in the Register, which are disclosable pecuniary interests and also to any other personal interests, as detailed in Part 2 of the Etchingham Parish Council Code of Conduct. If a Member considers that, having regard to the advice and guidance given above, they need to apply for a dispensation, a written request should be submitted to the Clerk to the Council in his/her capacity as the Proper Officer of the Council.

Procedure for dealing with Dispensation requests at Council meetings:

I recently attended the NALC Annual Conference and the SLCC Annual Conference and at both there were workshops covering 'Standards matters'. The question of how and when to deal with dispensations was one of the topics covered and at both Conferences it was suggested by the workshop advocates that the matter of dealing with and granting dispensations could be delegated, in accordance with Local Council's Standing Orders, to the Council's Proper Officer. Delegates however, considered that this was not an advisable course to contemplate as it might well place the Proper Officer (usually the Clerk) in a difficult position, especially if the dispensation was not a straightforward matter.

It can be seen from SALC/SCAPTC Legal Advice Note above that the recommendation is that only full Council should have the authority to grant dispensations.

Another matter that was raised at Conference was how a Council would deal with a request for a dispensation and whether one, or indeed more, Councillors should be excluded from the decision to grant a dispensation if they were the member(s) making the application. There does not seem to be any clear reference to this subject, certainly not within the legislation, but the view of the Legal Advisors at Conference was that the full Council, or however many were present, would deal with any application including those who would be the recipient of any dispensation.

This does seem to be a sensible approach for dealing with dispensations as if members were automatically excluded, it might be prejudicial to the outcome of any vote. It also allows Council to deal with the situation regarding the Etchingham Recreation Ground Trust where the whole Council are also Trustees; the Council would therefore need to grant a dispensation to each individual member to enable matters relating to the Trust and the administration and operation of QueensGardens, including the play area to be dealt with.

The legislation does make it clear that any request for a dispensation must be in writing to the Proper Officer of the Council, but it is not clear if electronic mail is permitted; members will be aware that the agenda and summons for Council meetings is still not legally permitted by electronic mail, even though such method is used by most Councils. However, it is suggested that such method of communication be allowed in the absence of any alternative dictate.

It is suggested that as the Agenda must be delivered to Council members giving three clear days notice of the meeting, any member having studied the agenda can e-mail the Clerk (Proper Officer) with any request for a dispensation in accordance with the guidance provided above.

It is also suggested that the Council have a standing agenda item at the beginning of the agenda and following the standing item for Declarations of Interest; this would allow Council to deal with any requests for dispensations prior to consideration of the business in question. If for whatever reason the Council felt unable to agree on a decision at the meeting it would have the usual option of deferring the business item to the next Council meeting.

If a member realised at a meeting that they required a dispensation because of the business to be discussed they should immediately bring the matter to the attention of the Clerk and the Chairman presiding at the meeting and a proposal would be made to Council to either defer the item of business to the next Council meeting or exclude the member concerned from the meeting for that item of business.

The Council's Standing Orders would require amendment but it is recommended that the matter be deferred pending the issue of the Standing Orders for Local Councils – 2nd edition which are due for publication in Autumn 2013 as indicated in the NALC Chief Executive Briefing CE01-12, 4th October 2012

- 1) Members are asked to approve the recommendation for a Standing Agenda item for the consideration of Dispensations**
- 2) Members are asked to agree to the procedure for written applications as detailed above.**
- 3) Members are asked to agree to the procedure for dealing with a request for a dispensation raised at any meeting without prior notice, as detailed above.**