

Title: Application for Dispensations – Melksham Without Parish Council

**Reporting Officers: Tim Darsley – Monitoring Officer
Nicola Mathiason – Deputy Monitoring Officer
Sonia Sharp – Solicitor**

Purpose

To consider an application under Section 81(4) of the Local Government Act 2000 for members of Melksham Without Parish Council to be granted dispensations to participate and vote on matters connected with a planning application relating to the George Ward School site in Melksham.

Background

The Deputy Monitoring Officer has received a letter from the Clerk to the Melksham Without Parish Council (Appendix A) containing an application on behalf of nine of their Parish Councillors for this Standards Committee to grant them dispensations so that they may consider and vote on matters concerning planning application 07/02806/OUT relating to the development of 270 houses at the George Ward School site. Without the dispensation, the Councillors believe that they would have to declare a prejudicial interest and would thereby be prevented from participating fully in the consideration of the matter.

Information

The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 empower Standards Committees to issue dispensations to Parish and Town Councillors in certain circumstances.

A written application is required providing the reasons why the grant of the dispensation is desirable. The nine Councillors have been requested to forward individual application forms to us setting out details of their individual prejudicial interests. As this meeting has had to be called at short notice, these forms will be circulated to members either shortly before the meeting and/or at the beginning of the meeting for members to consider.

Law

Members will be aware that the Code of Conduct states that if members have a prejudicial interest in a matter that is being considered by Council or its Committees then they should take no part in the consideration of the matter and should leave the meeting. There are two exceptions to this. Firstly, under paragraph 12(2) of the new Code, prior to withdrawing, a member with

a prejudicial interest may make representations, answer questions or give evidence at a meeting open to the public, provided that the public are also allowed to attend the meeting for the same purpose. After speaking, the member must immediately withdraw from the room. This Parish Council has adopted the Code and paragraph 12(2) therein.

The second exception is where the member has obtained a dispensation from the Standards Committee. The parish councillors wish to be granted a dispensation from the requirement to leave the meeting room, as set out in paragraph 12 of the new Code of Conduct, to enable them to receive reports, participate in any discussion of the reports and instruct the Clerk to the Parish Council to take appropriate actions, etc..

The Standards Committee may only grant a dispensation if:

1. It has received a written request for a dispensation from a Member explaining why such a dispensation should be granted; and
2. Without the grant of the dispensation the Council or its Committees would not be able to conduct its business either:
 - (a) because more than 50% of the Members entitled to take part in the meeting would not be able to do so, or
 - (b) the political balance of the Council or its Committees would be upset.

In deciding whether to grant a dispensation, the Standards Committee would need to take into account 1 and 2 above and all the other circumstances of the particular case.

These applications relate to ground 2 (a). The Parish Council has thirteen members. Your Officers will update members at the meeting with regard to the number of applications received and whether the 50% test is met.

A written application is required giving the reasons why the grant of the dispensation is desirable. The Standards Committee has a discretion, having regard to the terms of the application and all other circumstances of the case, to decide it is appropriate to grant the application. There is no obligation to grant the application. However there would be an expectation on the part of applicants that the Standards Committee would act consistently and not in an arbitrary fashion.

There is little guidance as to how the Committee should exercise its discretion in any particular case. The new Code has restricted the definition of a "prejudicial interest". However, if the dispensations are not granted the business of the Parish Council might be impeded if it were unable to formulate a response on matters such as planning applications and other regulatory matters.

The Committee must look carefully at the facts in each case, and be satisfied that it is appropriate to grant the dispensation requested. It should take into account the general principles underlying the Code of Conduct, including those of selflessness, honesty and integrity, objectivity and accountability. It will also take into account the reasons put forward by members as to why a dispensation should be granted; for example, the importance of being able to act as a community voice on the issue, or the particular local knowledge of a member which s/he wishes to contribute to the discussion. The question of whether a member has a direct financial interest, or a more indirect interest, in the matter under discussion may also be relevant.

The Standards Committee must take all relevant factors into account when deciding whether to grant a dispensation, so it is important for councillors to provide full information as to the reasons why a dispensation is required, and why it should be granted. Any dispensation will only cover the specific interests which are declared, so it is important to describe these fully on the application.

In terms of planning and other applications Councillors need to consider whether they may have a prejudicial interest arising from their personal connection with the applicant.

The question of a public perception of bias arising needs to be considered and whether it is possible for members to be seen to be truly objective when deciding on such matters. The Standards Committee will need to be satisfied that the benefits of allowing the council to consider the particular matter outweigh any possible conflict with the general principles underlying the Code of Conduct. It will take into account, for example, the importance of the matter to the community. It is suggested that it would be appropriate to weigh the impact of not granting the dispensations against the potential damage to public confidence of allowing participation by members who have a prejudicial interest. The Parish Council would not be making the final decision on any planning application.

The Committee has power to grant dispensations allowing the relevant member to participate fully in the business, or only partially - for example, being allowed to speak but not vote. Some members may only wish to be allowed to speak, and be content to abstain on any vote, and the model application form allows this. It also allows members to state for how long the dispensation will be required - there is a maximum period of 4 years.

When granted, dispensations are open to public inspection. At meetings, members with dispensations still need to declare their personal and prejudicial interest, and then they should also make it clear that they have received a dispensation allowing them to take part.

Recommendation

To consider the applications received for dispensation.