



CORNWALL ASSOCIATION OF LOCAL COUNCILS

UNIT 1/1A, 1 RIVERSIDE HOUSE, HERON WAY, NEWHAM, TRURO, CORNWALL, TR1 2XN

Serving the parish and town councils of Cornwall

A GUIDE TO AWARDING DISPENSATIONS 2012

1 Introduction

Parish Councils are now responsible for determining requests for a dispensation by a parish councillor under Section 33 of Localism Act 2011. This is because they are a "relevant authority" under section 27(6) (d) of the Act.

This guide explains:-

- a. the purpose and effect of dispensations
- b. the procedure for requesting dispensations
- c. the criteria which are applied in determining dispensation requests
- d. the terms of dispensations

2 Purpose and effect of Dispensations

In certain circumstances Councillors may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited because they have a Disclosable or Non Registerable Pecuniary Interest. Provided Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.

Section 31(4) of the Localism Act 2011 states that dispensations may allow the Councillor:

- a. to participate, or participate further, in any discussion of the matter at the meeting(s); and/or
- b. to participate in any vote, or further vote, taken on the matter at the meeting(s).

If a dispensation is granted, the Councillor may remain in the room where the meeting considering the business is being held and if the dispensation allows may also vote.

Please note: If a parish councillor participates in a meeting where he/she has a Disclosable Pecuniary Interest and he/she does not have a dispensation, they may be committing a criminal offence under s34 Localism Act 2011.

3 Process for making requests

Any Councillor who wishes to apply for a dispensation must fully complete a Dispensation Request form and submit it to the Proper Officer of the council (ie. the Clerk) as soon as possible before the meeting at which the dispensation is required.

Applications may also be made at the parish council meeting itself (if parish councils have a standing item on the agenda to deal with dispensation requests) and the nature of the interest has only become apparent to a councillor at the meeting itself.

4 Consideration by the Parish Council

The Parish Council can either delegate to the parish clerk the authority to grant dispensations or reserve such decisions for the full parish council.

In either case, the decision must be based on one or more of the following criteria :

- a. so many members of the decision-making body have Non Disclosable or Non Registerable Pecuniary Interests that it would impede the transaction of the business (ie. the meeting would be inquorate); or
- b. the authority considers that the dispensation is in the interests of persons living in the authority's area; or
- c. it is otherwise appropriate to grant a dispensation.

The parish clerk or parish council should formally notify the Councillor and the Monitoring Officer of its decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision. A copy of any dispensation should be held with the Member's Register of Interests.

Delegation to the Clerk

If the parish council decides to delegate this role to the parish clerk then it will need to make a formal resolution to this effect, on the lines of:

"RESOLVE that the Council delegates the power to grant dispensations to the Clerk. The power rests with the relevant authority under section 33(1) of the Localism Act 2011 and the basis is set out under section 33(2).

5 Criteria for Determination of Requests

In reaching a decision on a request for a dispensation the parish council or the parish clerk (as appropriate) will take into account:

- a. the nature of the Councillor's prejudicial interest
- b. the need to maintain public confidence in the conduct of the Council's business
- c. the possible outcome of the proposed vote
- d. the need for efficient and effective conduct of the Council's business
- e. any other relevant circumstances

6 Terms of Dispensations

Dispensations may be granted:

- for one or more meetings of the Council; or
- for a named period not exceeding 4 years (normally the annual meeting after the next elections)

7 Disclosure of Decision

Any Councillor who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates.

A copy of the dispensation will be kept with the Register of Councillors' Interests.



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PRE-DISPOSITION, BIAS AND PRE-DETERMINATION

It is your duty as a councillor to look at each decision on its merits, taking into account the points raised during the council's discussions. Bias and predetermination are not part of the Code of Conduct, they exist in civil law. However, you have a duty to keep an open mind at all times.

Pre-Disposition

Every councillor who has read their papers for the meeting, been engaged in the community and listened to the views of their electors will have an idea of how they wish to vote. This is not fixed viewpoint and is unlikely to have been expressed publicly. It is an opening opinion and is likely to be influenced by the discussion around the council table. This is '**pre-disposition**'

Pre-Determination

The Localism Act 2011 recognised that members are often elected because of their area of knowledge, expertise or links to a local issue. S25 (2) confirms that you will not have or appear to have had a closed mind just because you have previously done anything which directly or indirectly indicates how you might vote. It is the other actions which compound your links to the item to the point where a member of the public would believe that you could not possibly have an open mind.

Sometimes your own personal links and activities outside of the council will lead a member of the public to believe that you could only vote in one way, regardless of the debate at the council meeting. This is 'bias and predetermination' and you should declare this fact and behave as if you have a non-registerable interest and leave the room whenever the matter is being discussed and not take part in the discussion, decision or vote. This is '**pre-determination**'.

Example :

You have joined a campaign against a local wind farm development. You have attended meetings, spoken in the press, taken part in demonstrations, circulated leaflets and become a figurehead and spokesperson for the organisation. When the council considers the planning application

- a) Would the public think that you would be likely to make up your mind based on the facts on the night and the discussion at the meeting
- b) Have you spoken out publicly expressing a strong opinion and a view on the matter
- c) Are you pre disposed or pre-determined?

The answer must be yes – you are bias against the development and predetermined in the way you will vote.

Action :

At the item where interests are declared at the start of the meeting, make a statement as follows :

‘Agenda Item xxxx – I declare that I might be seen to be pre-determined on the matter and will therefore withdraw from that part of the meeting.’

This must be declared in a similar way to any other interest and should be clearly recorded in the minutes in the normal way.

Whilst failure to declare an interest does not affect the council’s decision, failure to withdraw as a result of bias and pre-determination leaves the council open to judicial review and exposes it to enormous expense and financial risk.

DISPENSATION REQUEST FORM

Please give full details of the following in support of your application for a dispensation. If you need any help completing this form please contact the parish clerk.

Your name	
The business for which you require a dispensation (refer to agenda item number if appropriate)	
Details of your interest in that business	
Date of meeting or time period (up to 4 years) for which dispensation is sought	
Dispensation requested to participate, or participate further, in any discussion of that business by that body	Yes / No
Dispensation requested to participate in any vote, or further vote, taken on that business by that body	Yes / No
REASON(S) FOR DISPENSATION	
33 a) without the dispensation the number of persons unable to participate in the transaction of business would be so great as to impede the transaction of the business	
33b) without the dispensation the representation of different political groups would be affected so as to alter the likely outcome of any vote	
33c) the dispensation is in the interests of persons living in the authority's area	
33e) that it is otherwise appropriate to grant a dispensation Reason :	

Signed: _____ Dated: _____

DECISION :	
Dispensation Given : YES / NO	LENGTH OF DISPENSATION :
Date:	Minute Number:
Signed : Clerk to the Council	