

Audit & Governance Committee

26 November 2019

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Request to consider a dispensation in respect of a Disclosable Pecuniary Interest

Final Decision-Maker	Audit & Governance Committee
Portfolio Holder(s)	Councillor Tom Dawlings, Portfolio Holder for Finance and Governance
Lead Director	Stephen McGinnes - Director of Mid Kent Services
Head of Service	Patricia Narebor – Head of Mid Kent Legal Partnership
Lead Officer/Author	Patricia Narebor – Head of Mid Kent Legal Partnership
Classification	Non Exempt
Wards affected	Park Ward

This report makes the following recommendations to the final decision-maker:

1. The Committee is asked to consider the request by Councillor Nicholas Pope to grant him a dispensation to permit him to attend committee meetings, debate and vote on items relating to the Calverley Square project should the need arise, and either:
 - (a) refuse the request;
 - (b) grant it unconditionally; or
 - (c) grant it subject to conditions.

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- A Prosperous Borough
- A Confident Borough

Timetable

Meeting	Date
Audit and Governance Committee	26 November 2019

Request to consider a dispensation in respect of a Disclosable Pecuniary Interest

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This Committee is required to consider the request for a dispensation for Councillor Nicholas Pope that will permit him to *attend committee meetings, debate and vote on items relating to the Calverley Square project should the need arise.*
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2. INTRODUCTION AND BACKGROUND

- 2.1 Audit and Governance Committee has a responsibility to promote and maintain high standards of conduct by Members and Co-opted Members of the Council and to make recommendations to Council on improving standards.
- 2.2 The Committee's functions also include the granting of dispensations pursuant to S33(2) of the Localism Act 2011 and paragraph 8 of the adopted Code of Conduct for Members taking into account the relevant conditions.
- 2.3 The Localism Act 2011, chapter 7 and related regulations require Councillors to register disclosable pecuniary interests (DPI) for themselves and their husband/wife/partner. The regulations include the registration of any beneficial interest in land which is in the area of the relevant local authority – in this case Tunbridge Wells. This will include a Councillor's home address and any other property owned within the borough.
- 2.4 Where a Councillor has a DPI, then section 31 of the Localism Act prevents the Councillor taking part in a meeting of the Council or its Committees. Following commencement of the Localism Act, the Department for Communities and Local Government provided guidance on the implications of a DPI registered by a Councillor within the Openness and Transparency on personal interests 2013 guide. The guidance is attached at **Appendix A** and the relevant section about restrictions relating to a DPI is as follows:

What does having a disclosable pecuniary interest stop me doing?

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

In certain circumstances you can request a dispensation from these prohibitions.

3. The Council's Code of Conduct

3.1 The Council's Code of Conduct for Members under Part 5 of the Constitution provides that the Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011. The Seven Principles are set out in the extract from the Code at **Appendix B** of this Report and consist of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. Members are required to behave in a manner that is consistent with the Seven Principles. In relation to Selflessness, Members are required to act solely in terms of the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, a friend or close associate.

3.2 The Code also includes provision for the granting of dispensations. The relevant sections read as follows:

"Disclosable Pecuniary Interest" means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Annex 2 and where either it is:

(a) your interest or

(b) an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and provided you are aware that the other person has the interest.

The interests noted in the regulations relate to (a) employment, office, trade, profession or vocation; (b) sponsorship; (c) contracts; (d) land; (e) licences; (f) corporate tenancies; and (g) Securities.

"Other Significant Interest" means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the Authority which:

(a) may reasonably be regarded as affecting the financial position of yourself and/or an Associated Person to a greater extent than: -

i. other council tax payers, ratepayers or inhabitants of the ward, as the case may be, affected by the decision; or

ii. (in other cases) other council tax payers, ratepayers or inhabitants of the Authority's area; affects the financial position of yourself and/or an Associated Person; or

(b) relates to the determination of your application (whether made by you alone or jointly or on your behalf) for any approval, consent, licence, permission or registration or that of an Associated Person;

and where, in either case, a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgment of the public interest.

3.3 Declaring interests and participation in meetings

The Code of Conduct, paragraph 5 requires Councillors to take the following steps where a DPI or Other Significant Interest is relevant to a decision to be made by the Councillor and/or at a committee:

Disclosable Pecuniary Interest

5 (b) Where you are present at a meeting and have a Disclosable Pecuniary Interest or Other Significant Interest in any matter to be considered, or being considered, at the meeting, you must:

- i. disclose the Interest; and
- ii. explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation or are acting under para 5(4):
- iii. not participate in any discussion of, or vote taken on, the matter at the meeting; and
- iv. withdraw from the meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
- v. not seek improperly to influence a decision about that business.

Other Significant Interest

5 (d) Where you have an Other Significant Interest in any business of the Authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. Having made your representations, given evidence or answered questions you must:

- i. not participate in any discussion of, or vote taken on, the matter at the meeting; and
- ii. withdraw from the meeting room in accordance with the Authority's Procedure Rules.

3.4 Dispensations

(b) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Audit and Governance Committee, its sub-committee, or the Monitoring Officer (where authorised) considers that:

- i. 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; or

- ii. 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; or
- iii. granting the dispensation is in the interests of persons living in the Authority's area; or
- iv. without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or
- v. it is otherwise appropriate to grant a dispensation.

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

4.1 Councillor Nicholas Pope's DPI and Dispensation request

Councillor Pope completed a Members' Interest form following his election on 3 May 2018, which was entered on the Register of Members' Pecuniary and Other Interests. The DPI form is appended to this report at **Appendix C**.

- 4.2 Under Part D – Land in respect of any beneficial interest in land which is within the area of Tunbridge Wells Borough Council; Cllr Pope declared that his spouse/partner has a beneficial interest in Apartment 14 Grove Hill House, 21-27 Grove Hill Road, Tunbridge Wells TN1 1SA.
 - 4.3 Councillor Pope requested the monitoring officer to grant a dispensation to enable him to participate and vote on the Calverley Square agenda item at various full Council meetings in June July, September 2019 and the extraordinary Council meeting in 8 October 2019. The request sent on 16 September is attached at **Appendix D** The monitoring officer declined to grant the dispensation on the basis that the matters outlined at paragraph 3.4 of this report (paragraph 8 of the Code of Conduct) had not been established. Councillor Pope requires the Audit & Governance Committee to review his application for a dispensation and the supporting statement is attached to Appendix D.
 - 4.4 On 20 July 2016 Full Council approved the Great Hall Car Park as the preferred site for the new theatre. Councillor Pope's spouse/partner's purchase of Apartment 14 Grove Hill House was completed on 28 April 2017 (source Public Land Registry website).
 - 4.5 The planning permission granted in respect of the Calverley Square project required the Council to make arrangements regarding a compensation fund as a mitigation measure for the benefit of the flats at Grove Hill House and the owners. 14 Grove Hill House forms part of these arrangements and is registered as a DPI on Councillor Pope's Register of Interests form.
 - 4.6 Councillor Pope also attended the CPO public Inquiry to object to the confirmation of the CPO. His written statement outlining why he considered that the CPO is not in the public interest is attached at **Appendix E** to this report.
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5. AVAILABLE OPTIONS

Members of the Audit and Governance Committee can consider the request for a dispensation and either:

- (d) refuse the request;
- (e) grant it unconditionally; or
- (f) grant it subject to conditions.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

This report does not require further consultation.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 The Committee's decision will be published in the minutes of this meeting on the Council's website.

8. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	<p>The Localism Act 2011, chapter 7 requires the Council to promote and maintain high standards of conduct by Members and Co-opted Members of the Council and to make recommendations to Council on improving standards. This function is delegated to the Audit and Governance Committee.</p> <p>Disclosable Pecuniary Interest are prescribed in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The Audit and Governance Committee is responsible for determining requests for dispensation by Councillors under section 33(2) Localism Act 2011.</p>	Patricia Narebor Head of Mid Kent Legal Partnership
Finance and other resources	There are no financial implications.	Head of Mid Kent Legal Partnership

Staffing establishment	<i>Not applicable.</i>	Head of Mid Kent Legal Partnership
Risk Management	The Council has a responsibility to maintain good governance. It must take steps to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services that it provides to the community.	Head of Mid Kent Legal Partnership
Data Protection	<i>The Register of Member Interests is a public register and published on the Council's website.</i>	Head of Mid Kent Legal Partnership
Environment and Sustainability	<i>There are no relevant issues identified within this report.</i>	Head of Mid Kent Legal Partnership
Community Safety	<i>There are no relevant issues identified within this report.</i>	Head of Mid Kent Legal Partnership
Health and Safety	<i>There are no relevant issues identified within this report.</i>	Head of Mid Kent Legal Partnership
Health and Wellbeing	<i>There are no relevant issues identified within this report.</i>	Head of Mid Kent Legal Partnership
Equalities	<i>There are no relevant issues identified within this report.</i>	Head of Mid Kent Legal Partnership

9. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Guidance – Openness and transparency on personal interests
- Appendix B: The Seven Principles of Public Life
- Appendix C: Register of Interests for Cllr Pope
- Appendix D: Email request for dispensation from Councillor Pope dated 16 September 2019
- Appendix E: Statement of Objection, Cllr Pope – CPO Public Examination

10. BACKGROUND PAPERS

None