



Penrith Town Council

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DISPENSATIONS POLICY

Statutory obligations

- a. The default statutory position is that a Member who has a disclosable pecuniary interest in any matter being considered at a meeting cannot speak or vote on that matter.
- b. Members may apply for a dispensation from these restrictions on specified statutory grounds and all applications will be decided on their individual merits.
- c. The Council will exercise its authority to grant dispensations subject to its general duty to promote high standards of conduct in a way that is consistent with the Seven Principles of Public Life and helps to maintain public confidence in the conduct of the Council's business.
- d. In considering whether and how to exercise its discretion, the Council will need to receive appropriate and relevant reasons why an application should succeed on one or more of the statutory grounds, with particular reference to the additional factors set out in this policy.
- e. **The onus is on the Member making an application to demonstrate that a dispensation is justified in the circumstances.**

Disclosable pecuniary interests under the Localism Act 2011

- f. In order to consider dispensations, it is first necessary to understand the rules around disclosable pecuniary interests – what they are, when they are engaged and their effect on participation. The following is only a summary of the position and Members should also refer to the other guidance available on disclosable pecuniary interests with the new Members' Code of Conduct.
- g. Under the Localism Act 2011 and The Relevant Local Authorities (Disclosable Pecuniary Interests) Regulations 2012 there are a number of disclosable pecuniary interests that prevent a Member from participating in any discussion or vote on a connected item of business under the following headings:
 - i. **Employment**
Any employment, office, trade, profession or vocation carried on for profit or gain.

ii. **Sponsorship**

Any payment, etc. towards the election expenses of a Member, or the expenses incurred in carrying out their official duties (other than from the Council). This would include any payment from a trade union.

iii. **Contracts**

Any contract with the Council for goods, services or works.

iv. **Land**

Any beneficial interest in land which is within Penrith. This includes any freehold or leasehold interest in land, as well as any tenancy.

v. **Licences**

Any licence to occupy land in the Penrith for a month or longer.

vi. **Corporate tenancies**

Any tenancy where the Council is the landlord and the tenant is a company or other body in which the Member or another relevant person has a beneficial interest.

vii. **Securities.**

Any shares, debentures, debenture stock, loan stock, bonds, unit trusts and similar investments in a body that has a place of business or land in Penrith and the total nominal value exceeds £25,000 or 1/100th of the total issued share capital.

The disclosable pecuniary interest that is most commonly engaged in relation to planning, and housing matters is iv) Land.

- h. The Localism Act 2011 does not provide any additional guidance on judging whether a disclosable pecuniary interest is engaged or not. It simply states that the prohibition on speaking or voting on a matter is engaged where a Member:
- i. Is present at a meeting.
 - ii. Has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and
 - iii. Is aware that the condition is met.
- i. It is up to individual Members to make a judgement whether they have a disclosable pecuniary interest in relation to any particular item of business. As a starting point, a Member should consider whether the matter before the meeting could reasonably be said to appear to be likely to affect their disclosable pecuniary interest, or whether a member of the public would consider that the Member might be influenced by their disclosable pecuniary interest. If the answer to either of these questions is in the affirmative, then the Member has a disclosable pecuniary interest in the matter being considered. This will be the case, for example, where a decision would materially affect a Member's interest in land, either by affecting the value of that land, the prospects of selling that land, or the use and enjoyment of that land.

Speaking in general terms, a Member is highly likely to have a disclosable pecuniary interest in a planning application for a property adjacent to their home. A Member is less likely to have a disclosable pecuniary interest in a planning application for a property several streets away from their home. However, any decision on whether a Member does have a disclosable pecuniary interest in a particular matter will always depend on the particular circumstances.

A Member who is present at a meeting of the Council, and who has a disclosable pecuniary interest relating to any business being considered, must not participate in any discussion of the business at the meeting, or participate in any vote taken on the matter at the meeting. If a Member becomes aware of their disclosable pecuniary interest during the meeting, they should not participate further from that point. These prohibitions apply to any form of participation, including speaking as a member of the public. In certain circumstances, Members can request a dispensation from these prohibitions.

- j. The Council's Standing Orders do not require a Member with a disclosable pecuniary interest in an item of business to automatically leave the room. The Member should however leave the room if they consider that their continued presence is incompatible with the Members' Code of Conduct or the Seven Principles of Public Life.
- k. A Member commits a criminal offence if, without reasonable excuse, they participate in any discussion or vote on any matter in which they have a disclosable pecuniary interest. For this reason Members are advised to err on the side of caution.
- l. Members are advised to seek advice from the Monitoring Officer or the Town Clerk if they are unsure about whether they have a disclosable pecuniary interest in a particular matter.

Granting dispensations under the Localism Act 2011

- m. The Council may, on a written request made to the Town Clerk by a Member, grant a dispensation relieving the Member from either or both of the restrictions on speaking or voting in cases described in the dispensation. A dispensation must specify the period for which it has effect, which may not exceed four years.
- n. The granting of such dispensations had been a function of the Town Clerk as she was politically neutral. It is proposed that the responsibility is given to Council.
- o. As previously stated, the onus is on individual Members to decide whether they have a disclosable pecuniary interest in any given matter. Therefore the Council will generally assume that any dispensation being sought is required in order to allow the Member concerned to participate in the relevant item of business and will not normally refuse a request simply on the basis that a dispensation is not thought to be necessary. The only exception to this is where the facts as disclosed in the application form could not possibly amount to a disclosable pecuniary interest being engaged. Any dispensation granted is entirely permissive in nature and does not impose any restrictions on speaking or voting where no such restrictions otherwise exist.

- p. The expectation is that the Town Clerk will read out any applicable dispensations at an appropriate point in the meeting, either under the agenda item on Members' declarations or at the start of the consideration of the item of business in question.

Timeliness of applications

- q. The Council requests that Members lodge any applications as soon as possible after becoming aware that a dispensation is required in order to participate in a particular item of business. A Member does not have to wait until they know the precise date of the meeting at which a matter will be considered before applying for a dispensation. If applications are submitted at short notice, it may not be possible to consider them in time for the meeting in question.

The statutory grounds for granting a dispensation

- r. The legislation provides that a relevant authority (which includes the Council) may only grant a dispensation if, after having had regard to all relevant circumstances, the authority:
- i. Considers that 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.
 - ii. 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.*
 - iii. Considers that granting the dispensation is in the interests of persons living in the authority's area.
 - iv. If it is an authority operating executive arrangements, considers that 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.**
 - v. Considers that it is otherwise appropriate to grant a dispensation.

*And **Grounds ii) and iv) are not directly applicable to the Town Council but are included for completeness and context.

- s. The default position is that a Member with a disclosable pecuniary interest in any matter may not speak or vote on that matter. The onus is on the Member making an application to demonstrate that at least one of the statutory grounds for granting a dispensation is satisfied. One obvious example of where it may be appropriate to grant a dispensation under statutory ground is where the decision-making would otherwise be inquorate.
- t. In the Council's view the reference in statutory ground to "persons living in the authority's area" is a reference to residents. A dispensation may also be granted where it is in the interests of other persons accessing Penrith, its facilities and services – such as workers – In both cases, the Council will consider whether not granting a dispensation would be to the disadvantage of that group. The Council will also take into account how many persons would be disadvantaged, and to what extent.

Factors to be taken into consideration

- u. In deciding whether to grant a dispensation under one or more of the specific statutory grounds, the Council will take into account the following (non-exhaustive) list of factors, as well as any other relevant circumstances, as appropriate. However, the Council will look at the merits of each application in the round, and simply addressing one or more of the factors below does not mean that a dispensation will be granted:

i. Maintaining public confidence

Is the nature of the Member's interest such that allowing them to participate would risk damage to public confidence in the conduct of the Town Corporation's business?

ii. Applications to vote

Granting a dispensation to vote has a more direct influence over the decision-making process than a dispensation to speak, goes beyond simply representing the views of constituents and carries more risk of damaging public confidence. Therefore, a dispensation to vote will only be granted in exceptional circumstances.

iii. Equivalent public rights

The default position under the Localism Act 2011 is that a Member with a disclosable pecuniary interest in a matter being considered at a meeting loses any right to speak that they would otherwise have had – even as a member of the public. However, in the Council's view the existence of such public speaking rights are a relevant consideration. Therefore, a dispensation to speak is more likely to be granted for the purpose of making representations, answering questions, or giving evidence relating to the business where the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or some other reasonable expectation. This is most likely to arise in relation to planning matters. The Council recognises the difficulties facing a Member who lives within the ward they represent.

A residential Member in the Town seeking to represent their constituents will more frequently find that they have a disclosable pecuniary interest in planning and licensing applications than an elected Member elsewhere. The Council will look favourably on requests from residential Members to speak on such applications within their wards as a member of the public, where they have submitted written representations in the normal way. Any Member granted a dispensation to speak in such circumstances should then be treated as a member of the public when making oral representations on that matter. The onus though is still on the Member concerned to demonstrate that it is appropriate to grant a dispensation.

iv. Expectation of ward representation

Where there is a reasonable expectation of ward representation, can the Member's ward be adequately represented without the dispensation being granted? For example, is another Member of the ward able to attend the meeting and speak on the matter – either because they do not have a disclosable pecuniary interest, or because they have already been granted a dispensation? Are there other mechanisms through which the views of constituents could be communicated, either through the Member submitting written representations or by briefing another Member of the committee from a different ward to speak on their behalf?

v. Widely held interests

Is the interest common to the Member and a significant proportion of the general public? If so, a Member may be less likely to be influenced by that interest, and granting a dispensation may carry less risk of damaging public confidence. An obvious example would be the setting of the Precept.

vi. Directly engaged interests

How directly engaged is the disclosable pecuniary interest? The Council will only grant a dispensation to a Member to participate in business relating to their particular lease or tenancy in very exceptional circumstances.

vii. Personal knowledge, etc.

Is the participation of the Member in the business that the interest relates to justified by their particular knowledge, role or expertise? The potential contribution would have to be of especial value to the decision making process and provide a perspective that would not otherwise be available. Should the knowledge or expertise in question be provided by a Member or by a disinterested official adviser? Would the Member's participation assist or potentially distort the debate?

viii. Diversity and inclusion

Does the Member have a particular viewpoint that might not otherwise be represented and might assist the debate in relation to that particular matter – whether this relates to age, race, disability, gender, sexual orientation, religion or belief, or any other protected characteristic?

ix. Manifesto promises

Was the Member elected on a public platform that they would specifically address the item or items of business for which the dispensation is sought?

x. Scope and duration

Some requests for dispensations that are received are general in nature and for a lengthy time period e.g., a request to speak on planning matters until the ward elections in 2027. Others are much more specific in relation to a particular matter at a particular meeting e.g., a request to speak on planning application XXX at the Planning Committee on XXX.

A focussed application, as in the latter example, is more likely to be successful as this enables the Council to consider a specific set of circumstances. However, to avoid unnecessary bureaucracy arising from delays and adjournments, it is generally acceptable to apply for a dispensation in relation to a specific matter at a specific meeting, and/or such later meetings of that committee during the municipal year at which the matter may be considered.

xi. Previous dispensation decisions

The Council cannot fetter its own discretion and must consider each application on its own merits. However, it is beneficial for all concerned for there to be a consistent approach to applications made in similar circumstances, and the Council will therefore have due regard to its own previous decisions, always acknowledging that the consensus can change over time.

Other related matters

Multiple applications from a particular ward

- v. Applications to participate in a particular item of business may be received from more than one Member of the same ward. If one Member of the ward is granted a dispensation, this will have a bearing on whether any other Members of the ward should also be granted a dispensation. For this reason, the Council would prefer to consider the respective merits of all applications from a single ward on a particular item of business at the same time, rather than on a 'first come, first served' basis.

To assist with this process, Members are reminded of the request to lodge any applications as soon as possible after becoming aware that a dispensation is required. The Members of each ward are encouraged to work together in deciding whether an application for a dispensation should be made and, if so, in considering which Member or Members would be in the strongest position to apply. This could potentially be organised through the ward deputy.

Precept

- w. The Department for Communities and Local Government guide for councillors entitled 'Openness and transparency on personal interests' states that, "...being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support." Whilst this guidance will no doubt provide comfort to Members, it is not intended to be a definitive statement of the legal position. Although the prosecution of a Member who participated in such circumstances is highly unlikely, this cannot be absolutely guaranteed.

Members are therefore entitled to apply for a dispensation should they wish to have greater assurance on this point. As the Council considers the granting of a dispensation in these circumstances to be uncontroversial, authority has been delegated to the Town Clerk to determine applications for dispensations relating to Precept.

Sensitive matters

- x. For uncontroversial confidential and sensitive matters related to a Member, which may require a dispensation, authority has been delegated to the Town Clerk to determine applications for dispensations relating to sensitive matters. For example a dispensation is sought for long-term absence due to health grounds which may exceed the six months attendance requirement to qualify as a Member. The health reasons would remain confidential the dispensation would be considered and taken forward as an apology for absence for a specific period of time.
- y. **Any Member applying for a dispensation should thoroughly address the factors set out at in the policy and must satisfy the Council that a dispensation is justified on one or more of the statutory grounds.**

ADOPTED: 2017

REVIEWED : EACH COUNCIL TERM

AMENDED AND APPROVED: 2023

Next review: Jan 2027

DISPENSATION REQUEST FORM**APPENDIX****A**

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 Town Clerk

Your name:	
The council business/matter for which you require a dispensation (refer to agenda item number if appropriate):	
Details of your interest in that council business/matter:	
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 council business/matter by that body:	
Dispensation requested to participate in any vote, or further vote, taken on that council business/matter by that body:	
REASON(S) FOR DISPENSATION	
33 a) without the dispensation the number of persons unable to participate in the transaction of council business/matter would be so great as to impede the transaction of the council business/matter.	
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:**Date:**

DECISION: Dispensation Given: YES / NO Length of Dispensation (up to 4 years):

Date:**Minute Number:**