

# CHESHIRE EAST COUNCIL

## REPORT TO: STANDARDS COMMITTEE

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<b>Date of Meeting:</b>	21 <sup>st</sup> September 2009
<b>Report of:</b>	Deputy Monitoring Officer
<b>Subject/Title:</b>	Rostherne Parish Council – Request for Dispensations

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### **1.0 Report Summary**

- 1.1 The report describes and explains the requests which have been made by each Member of Rostherne Parish Council for a dispensation to enable them to take part in debate and vote upon any matters relating to the Tatton Estate which come before the Parish Council for consideration. The applications explain that all Members of the Parish Council are tenants of Tatton Estate which owns all property in the parish of Rostherne, with the exception of the Church, the Vicarage and the Swan Hotel.

### **2.0 Recommendations**

- 2.1 The Committee is asked to consider whether or not to grant each of the dispensations applied for.

### **3.0 Reasons for Recommendations**

- 3.1 The Regulations described in this report oblige the Standards Committee to make decisions on whether or not to grant dispensations, when applications are received.

### **4.0 Wards Affected**

- 4.1 Not applicable.

### **5.0 Local Ward Members**

- 5.1 Not applicable.

### **6.0 Policy Implications including**

- 6.1 None. There is no policy on the consideration of whether to grant dispensations; the legal provisions described in this report set out the criteria to be taken into account.

**7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

7.1 None identified.

**8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)**

8.1 None identified.

**9.0 Legal Implications (Authorised by the Borough Solicitor)**

9.1 These applications must be determined in accordance with the Standards Committee (Further Provisions) (England) Order 2009 which are outlined in this report.

**10.0 Risk Management**

10.1 Not applicable.

**11.0 Background and Options**

11.1 In April 2006, on receipt of applications, the Standards Committee of Macclesfield Borough Council granted a dispensation to all of the Members at that time of Rostherne Parish Council on the basis that each of them was a tenant of the Tatton Estate which owns all property within the parish, with the exception of the Church, the Vicarage and Swan Hotel. The dispensation allowed those members to speak and vote at meetings when matters pertaining to Planning Applications for the Tatton Estate were discussed. Had it not been for the dispensations, they would all have had prejudicial interests which would have precluded them from doing so under the Code of Conduct for Members. The dispensations were expressed to be in place for a period of 4 years, or whenever the existing term of office of the Members expired, whichever was the shorter.

11.2 The term of office of those members came to an end in May 2008, and as no further dispensation request was received or granted prior to the expiry of those dispensations, there is currently no dispensation in force for any of the members of Rostherne Parish Council.

11.3 There are eight parish councillors on Rostherne Parish Council and requests for dispensations to be granted in the terms described in the respective applications have now been received from each Member). These are reproduced at Appendix 1. Whilst each member must apply separately and each application must be the subject of an individual decision, it will be noted that the circumstances outlined are the same for each application.

- 11.4 The Relevant Authorities (Standards Committee) Dispensations) Regulations 2002 were in force in 2006; these have since been revoked and replaced by Part 4 of the Standards Committee (Further Provisions) (England) Order 2009.
- 11.5 The reason for the current requests put forward in the applications is to enable the Parish Council to conduct its business in relation to matters concerning the Tatton Park estate, because without a dispensation, the Parish Council would be unable to consider any matter concerning Tatton Estate land and property. It is claimed in the applications that this would impair the democratic process. For example, if a planning application in respect of land owned by Tatton Estate, was to be submitted to the Parish Council, all of its Members would be precluded by the Code of Conduct from taking part in debate or a decision on whether or not the application should receive the Parish Council's support, and the Parish Council would consequently be unable to comment at all on the application. This is felt by the applicants to be an unsatisfactory situation.
- 11.6 S54A(1) of the Local Government Act 2000 allows the function of determining dispensation requests to be dealt with by a Sub-Committee of the Standards Committee. However, this is not a matter which has so far been delegated to any of the existing Sub-Committees of the Standards Committee. If the Committee so wished, this function could be delegated. This is the subject of a separate report to the Committee. Irrespective of any decision on that report as to how future dispensation requests should be dealt with, these current applications should now be determined by the full Committee.
- 11.7 The Standards Committee can grant dispensations if it is satisfied that –
- (a) where the transaction of business of the Authority would, but for the grant of any other dispensation in relation to that business, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because –
    - (i) the number of Members of the Authority prohibited from voting on the business of the Authority at a meeting exceeds 50% of those Members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business; or
    - (ii) the number of Members prohibited from voting on the business of the Authority at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting.

- 11.8 The Standards Committee must decide whether it agrees that this situation applies to Rostherne Parish Council. Standards for England (formerly the Standards Board for England) Guidance gives more detail about how applications should be considered and determined.
- 11.9 The Guidance explains that the Standards Committee should ignore any dispensations already granted to other Members, and apply the above criteria, disregarding any other dispensations already allowed. (There are two exceptions to the power to grant dispensations, in that dispensations cannot be allowed for a member to review a decision they have made themselves, or to allow an Executive member with a prejudicial interest to take an executive decision about it on their own, neither of which applies to the Rostherne case).
- 11.10 The Guidance also recommends that the following questions are considered:
- Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?
  - Is the interest common to the member and a significant proportion of the general public?
  - Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?
  - Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? Ans is the member's interest not a financial one?
- 11.11 The maximum time a dispensation can last for is 4 years. In practice, if the Standards Committee is minded to grant dispensations in these circumstances, the Committee could consider making the time limit 4 years or until the next elections, whichever is the shorter, as the Macclesfield Borough Council Standards Committee did in 2006.

## **12.0 Overview of Year One and Term One Issues**

- 12.1 This is the first occasion on which the Standards Committee has been required to determine a dispensation request. Arrangements for future cases are dealt with in a separate report.

## **13.0 Access to Information**

### **Background papers:**

Standards Committee (Further Provisions) (England) Order 2009  
Standards for England Guidance document "Dispensations"

The background papers relating to this report can be inspected by contacting the report writer:

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