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| <b>Bath &amp; North East Somerset Council</b>  |  |                          |
| MEETING:   | <b>STANDARDS COMMITTEE</b>                     | AGENDA<br>ITEM<br>NUMBER |
| MEETING DATE:  | <b>16 DECEMBER 2010</b>                        |                          |
| TITLE:   | <b>DISPENSATION – COMBE HAY PARISH COUNCIL</b> |                          |
| WARD:  |  |                          |
| <b>AN OPEN PUBLIC ITEM</b>   |  |                          |
| <b>List of attachments to this report:-</b>  |  |                          |
| <b>1) Appendix 1 - Letter dated 7<sup>th</sup> December 2010 and attached application for dispensation</b> |  |                          |

## **1 THE ISSUE**

- 1.1 To consider an application for a dispensation to enable a newly-co-opted member of Combe Hay Parish Council to speak on matters connected with the site of the former Fullers Earth Works and surrounding fields, hillside and woodland.

## **2 RECOMMENDATIONS**

- 2.1 That the Committee determines the application.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 None.

## **4 THE REPORT**

- 4.1 The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 empower Standards Committees to issue dispensations to parish councillors in certain circumstances.
- 4.2 Under the regulations the Committee may grant a dispensation if the transaction of business of the parish council would, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because the number of parish councillors who are prohibited from participating in the business of the parish council exceeds 50% of those councillors who are entitled or required to participate.
- 4.3 In July 2006 the Committee granted a dispensation to all seven members of Combe Hay Parish Council who were members of a single issue protest group in the following terms:-
- (a) At meetings of the Combe Hay Parish Council, you are given a dispensation from requirements to leave the meeting room set out in paragraph 10 of the Code of Conduct to enable you to speak on matters connected with the site of the former Fullers Earth Works and surrounding fields, hillside and woodland (the boundaries of which are shown marked xxxx on the attached plan) on which the Parish Council is being consulted by Bath and North East Somerset Council or another statutory body/agency.

- (b) Interests relating to this dispensation must be declared in the usual form at parish council meetings and reference made to this dispensation. Such declarations will then be minuted accordingly and referred to in any response by the Clerk to the Parish Council to consultation by Bath and North East Somerset Council or another statutory body/agency.
- (c) This dispensation will be subject to review by the Standards Committee at its first meeting after the parish council election **in May 2011**.

4.4 The Clerk to the Parish Council has reported that there have been agenda items at each meeting of the Parish Council relating to the use of the land and proposals relating to footpaths on the land. Members attending the meetings have declared prejudicial interests in the usual way and reference has been made to the dispensation.

4.5 One of the parish councillors who had a dispensation is no longer a parish councillor and an application has been received from the following newly co-opted member of Combe Hay Parish Council:-

Mr F Davis

Mr Davis is a member or former member of the Victims of Fullers Earth, a single issue protest group. He considers that circumstances are likely to arise when he would have a prejudicial interest in relation to matters connected with the site of the former Fullers Earth Works and surrounding fields, hillside and woodland, currently in the ownership of Gazelle Properties Limited.

4.6 The Code of Conduct provides that a member has a personal interest in respect of any matter that must be registered, or, where:

- the matter under discussion might reasonably be regarded as affecting the well-being or financial position of the member or any person or body described in paragraph 8 of the Code (personal interests) to a greater extent than the majority of council tax payers, ratepayers or inhabitants of the electoral division or ward affected by the decision. Where there is no electoral division or ward the issue is whether the matter might affect the member to a greater extent than the majority of the council tax payers etc in the authority's area.

The general test as to what comprises a prejudicial interest remains unchanged: namely, that where a member has a personal interest that interest is also a prejudicial interest where it is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice their judgement of the public interest. However, new Code provides that a member does not have a prejudicial interest where:

- the matter under discussion does not affect the financial position of the member, or any person or body described in paragraph 8 of the Code (personal interests)
- the matter does not relate to the determining of any approval, consent, licence, permission or registration in relation to the member, or any person or body described in paragraph 8 of the Code;
- the matter relates to specific exemptions, none of which are likely to arise in this case.

The basic rule on the effect of prejudicial interests on participation is that unless a dispensation has been obtained from the Standards Committee, a member with a prejudicial interest must withdraw from the room in which the meeting is taking place. However, under paragraph 12(2) of the 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. Paragraph 12(2) is not mandatory for parish councils, but is included in the code adopted by Combe Hay Parish Council.

4.7 Under the Code, parish councillors are be able to attend a parish council meeting for the purpose of making representations, answering questions or giving evidence relating to matters in which they have a prejudicial interest, to the extent that members of the public are allowed to attend the meeting for the same purpose.

4.8 The parish councillor wishes to be granted a dispensation from the requirement to leave the meeting room set out in paragraph 12 of the Code of Conduct to enable him to receive reports, participate in any discussion of the reports and instruct the Clerk to the Parish Council to take appropriate actions such as submitting, on behalf of the Parish Council, letters, emails or speeches supporting or objecting to or commenting on matters connected with land consisting of the former Fullers Earth Works and surrounding fields, hillside and woodland, currently owned by Gazelle Properties Limited, on which the Parish Council is being consulted by Bath and North East Somerset Council or another statutory body/agency.

4.9 The Committee must be satisfied that the parish councillor is eligible to apply for dispensations and, in the light of all the circumstances of the case, that it is appropriate to grant the dispensation. There is little guidance as to how the Committee should exercise its discretion in any particular circumstances and practice elsewhere appears to vary (see Para. 4.2 above).

4.10 If the Committee is minded to grant the application it is suggested that it be granted in the following terms:-

- (a) at meetings of the Combe Hay Parish Council, you are given a dispensation from the requirement to leave the meeting room set out in paragraph 12 of the Code of Conduct to enable you to receive reports, participate in any discussion of the reports and instruct the Clerk to the Parish Council to take appropriate actions such as submitting, on behalf of the Parish Council, letters, emails or speeches supporting or objecting to or commenting on matters connected with land consisting of the former Fullers Earth Works and surrounding fields, hillside and woodland, currently owned by Gazelle Properties Limited, on which the Parish Council is being consulted by Bath and North East Somerset Council or another statutory body/agency
- (b) interests relating to this dispensation must be declared in the usual form at meetings and reference made to this dispensation. Such declarations will then be minuted accordingly and referred to in any response to consultation by Bath and North East Somerset Council or another statutory body/agency.

## **5 RISK MANAGEMENT**

5.1 A risk assessment related to the issue and recommendation has been undertaken, in compliance with the Council's decision making risk guidance.

## **6 CONSULTATION**

6.1 A copy of this report has been provided to the Clerk to the Parish Council and any comments will be reported to the meeting.

## **7 ISSUES TO CONSIDER IN REACHING THE DECISION**

7.1 These are set out in section 4 of the report.

## **8 ADVICE SOUGHT**

8.1 This report has been prepared on behalf of the Council's Monitoring Officer.

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| <b>Contact person</b>  | Amanda Brookes, Corporate & Community Law Manager Tel:01225 395172 |
| <b>Background papers</b>   | None   |
| <b>Please contact the report author if you need to access this report in an alternative format</b> |  |