

Bath & North East Somerset Council				
MEETING	Standards Committee			
MEETING	12 October 2011	EXECUTIVE FORWARD PLAN REFERENCE: <i>[Cabinet reports only]</i>		
WARD:	E 9999			
TITLE:	Declarations of Interest – Second Homes			
WARD:	All			
AN OPEN PUBLIC ITEM				
List of attachments to this report: None				

1 THE ISSUE

1.1 A request has been made of the standards Committee, by Cllr Wright, to consider how declarations of interest can be improved regarding property ownership and second homes owned and situated outside the Council's area.

2 RECOMMENDATION

The Committee is asked to.

2.1 Consider Councillor Wright's request and decide whether to recommend to Council any change to its Code of Conduct that would require members to register as a pecuniary interest any property interest held outside the Council's area.

3 THE REPORT

3.1 The Localism Act 2011 (the Act), section 29, requires the Monitoring Officer to establish and maintain a register of interests of members & co-opted members of the authority ("members").

3.2 By section 29(2) of the Act and Subject to the provision of chapter 7 of the Act, it is for the Council to determine what is to be entered into the Council's register.

3.3 The Council adopted the LGA Model code of conduct and interest rules (Code) at its Annual General Meeting on the 6 May 2021.

<https://democracy.bathnes.gov.uk/documents/s67874/Code%20of%20Conduct%20and%20Interest%20rules.pdf>

- 3.4 Chapter 7, section 30(1) of the Act details what action must be taken by members within 28 days of taking office. They must notify the Monitoring Officer of any Disclosable Pecuniary Interests (DPIs) which are defined by reference to a description specified in regulations made by the Secretary of State. Those regulations are found here <https://www.legislation.gov.uk/ksi/2012/1464/made>
- 3.5 The Code adopted by Council in May 2021 replicates, at pages 12-14, the table of DPI's provided for in those regulations. This includes Land and property within the area of the council.
- 3.6 It is a criminal offence if without reasonable excuse, a member fails to record their DPIs.
- 3.7 It can be seen, therefore, that by virtue of section 29 (2) of the Act the Council could include a requirement, in its code, that a member register as a pecuniary interest ownership of property outside its area but, if it did so, this would not be a DPI and it would not be a criminal offence if a member failed to register it.
- 3.8 The purpose of Chapter 7 of the Act, in particular the requirement to register DPIs, is to ensure transparency in decision making by seeking to prevent a member making or participating in the debate and vote on a matter where they have a conflict of interest. DPIs therefore include the need to declare ownership of a property in the Council's area because this is an interest which may give rise to a conflict of interest when making decisions that directly affect or might apply to that property.
- 3.9 Imposing a requirement on a member to declare a pecuniary interest in respect of a property outside the Council's area would not aid transparency in relation to local decision making. It would not be a criminal offence were a member to fail to disclose such an interest if such a requirement is imposed. At best it would be a breach of the code. Such a breach would be hard to identify but even where identified any sanction for breach would be of minimal effect.
- 3.10 In determining how the Standards Committee should respond to the request it must be appreciated that any decision would be the Council's. Only a recommendation to Council could be made by the committee to include such requirement. In considering such a recommendation the Council would be advised of the need to ensure that the Council does not exercise its statutory powers for an improper purpose.
- 3.11 Pursuant to the Human Rights Act, Article 8, an individual has the right to respect for their private and family life. It includes the requirement to protection for personal information which would include information about property ownership. The right is not absolute. It is qualified and in certain circumstances the person may be required to disclose that information. Parliament has determined that this is relevant to an individual when they become a member of a Council and this is limited to the circumstances required by Chapter 7 of the Act. Any interference of that right would need to be justified as necessary, lawful, and proportionate.

4 STATUTORY CONSIDERATIONS

4.1 Part 3 of this report above considers the relevant statutory considerations.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 Including, as a pecuniary interest in the Council's code, ownership of property outside the Council's area could potentially led to an increase in investigations if members refused to register such pecuniary interests on the basis that they breached their Human Rights. Such investigations would be costly to investigate and determine and the sanctions available for breach would not appear to justify this additional cost.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

7 EQUALITIES

7.1 The members right to a private and family life under Article 8 Human Rights Act has been considered in this report

8 CLIMATE CHANGE

8.1 There are no climate change implications arising from this report.

9 OTHER OPTIONS CONSIDERED

9.1 None.

10 CONSULTATION

10.1 The Monitoring officer and S.151 Officer have been consulted in the preparation of this report.

Contact person	Michael Hewitt, Head of Legal & democratic service & Monitoring Officer
Background papers	None
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