

Dear Councillors,

Thank you very much for taking the time to read my note and respond as necessary seeking advice and/or clarification on your declaration of interests in relation to the list of proposed site allocations in the proposed Local Plan.

I have had the opportunity to note your queries and respond to them individually.

It is natural and commonplace for Councillors to own their own homes (and sometimes also a financial interest in a second or subsequent property) in the area; and/or be related to, or a close associate of, someone in the area. Therefore, the question arises for each Councillor of whether that home ownership gives rise to a conflict of interest that is relevant to their participation in the Local Plan Regulation 18 debate and vote.

This exercise will be undertaken at each and every stage of the process of adopting the Local Plan. My advice to individual Councillors may change at each stage, depending on the content of the Local Plan (for instance the proposed allocations may change)

Although the decision tonight does not concern the adoption of the plan, simply whether to consult on the draft Local Plan, the draft does represent the Council's preferred option at this stage, including proposed site allocations. There is the potential, therefore, that the proposed Local Plan, and in particular its proposed site allocations, may affect private interests of Councillors.

To assure members of veracity of this advice, this has had input from two external barristers.

Non-Registerable Interests

In accordance with the Council's Code of Conduct, Councillors are required to disclose Non-registerable interests ("NRIs") when a matter which *affects* either (a) your own financial interest or well-being or (b) the financial interest or the well-being of a close associate or (c) the financial or the well-being of a body with you have registered as a Other Registerable interest.

Guidance published by the Local Government Association on the Model Councillor Code of Conduct (on which Uttlesford Code of Conduct is based) advises as follows:

“What is the difference between ‘relates to’ and ‘affects’?”

Something relates to your interest if it is directly about it...

‘Affects’ means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

What does “affecting well-being” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life or that of someone you are closely associated with, either positively or negatively, is likely to affect your well-being. There may, for example, be circumstances where any financial impact of a decision may be minimal but nevertheless the disruption it may cause to you or those

close to you could be significant. This could be on either a temporary or permanent basis.

Whether to withdraw because of an NRI?

If Councillors consider that they have an NRI, they must disclose this interest.

Where that is the case, the Appendix B of the Council's Code of Conduct establishes the following test to determine whether Councillors are permitted to take part in the meeting:

"9. Where a matter...affects the financial interest or well-being:

a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;

b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest."

Proximity to proposed allocations

Although not the only consideration in determining whether there is an NRI, the proximity between a proposed allocation and a property owned by Councillors is plainly an important consideration. If a property owned by a Councillor is in close proximity to a proposed allocation then this *may* amount to an NRI. Proximity of 5 miles would clearly not be perceived as representing an NRI, but immediate adjacency (i.e. immediately the other side of a garden fence or just across the road from the property) would likely amount to an NRI.

Officers have carried out an exercise regarding the distances between the proposed site allocations and the proximity to Councillors' homes, as already publicly declared. This has been done for all 39 Councillors objectively, and without fear or favour, and so as to assist Councillors to fully understand their position and enable them to form their own view on whether they should declare a NRI and/or withdraw from the meeting. It should be noted that this exercise did not consider the proximity between allocated sites and properties owned by relatives or close associates of any Councillors, which would also need to be considered.

There is no national guidance or obvious explicit case law to determine quite how close a site and an owned property would need to be to amount to an NRI.

Officers have done so in the context of a relatively recent situation in Uttlesford in which a (now former) Councillor had a Standards complaint relating to declarations of interest partially upheld and thereafter published. Officers have therefore determined that it is better to be aware of any potential issues of controversy in this regard and address them calmly up front, rather than face a challenge after a (possibly close) vote that puts the outcome of that vote into question.

Officers have had to take a pragmatic approach as to how close a councillor's owned home is to the nearest of the allocated sites, and whether such proximity whilst *not* amounting to a Declarable Pecuniary Interest (as their home is not the proposed site itself), would nonetheless likely be considered a non-Registrable Interest 'NRI'.

Proximity of 5 miles would clearly not be perceived as representing an NRI, but immediate adjacency (i.e. immediately the other side of a garden fence or just across the road from the property) would likely amount to an NRI. There is however no national guidance or obvious explicit case law to determine quite how close a site and an owned property would need to be to amount to an NRI. In each case, judgment will need to be exercised as to whether a matter affects the interest of a member, their relative or close associate, to a greater extent than it affects the interests of the majority of inhabitants of their ward affected by the decision and, whether a reasonable member of the public knowing all the facts would believe it would affect the member's view of the wider public interest.

Officers have considered two alternative thresholds for proximity as a guide to applying the above principles – one of 20 metres, and a second of 150 metres. As a starting point or rule of thumb, Officers consider that where a Councillor's property is 20 metre or less any Members whose homes are that close to one of the allocated sites should declare an NRI and should withdrawing from the meeting. In the case of Councillors whose homes are in this range between 20 and 150 metres, officers have advised those Councillors and invited them to make their own judgement as to whether or not they feel they should declare an NRI and/or withdraw from the meeting (applying the tests set out in the Code of Conduct as set out above). These thresholds are indicative, and judgment will need to be exercised on the individual facts in each case. The same applies to interests of a relative or close associate of a member, and members will need to make their own judgment on this basis as well. As a general rule, where a property is further than 150 meters in distance, Officers consider that the allocation is less likely to directly affect a Councillor's interest, however Councillors must exercise their own judgment in each case.

Proximity to rejected allocations

For clarification, sites that were put into the call for sites but ultimately rejected and do not form part of the proposed plan before you tonight were not considered as part of the exercise as they do not form part of the decision before you tonight at this Reg 18 stage. If, by the time the plan progresses to Reg 19 and some of these currently rejected sites make it into the plan, the same exercise will be carried out and if other Councilors homes are adjacent to or close to the same rules will apply.

Ramifications and Dispensation

In light of the approach set out above, I have advised one Councillor out of all 39 whose home is immediately adjacent to a proposed allocated site (and indeed surrounded by the proposed allocation) that they should declare an NRI and withdraw from the meeting.

I have further advised the two other Councillors out of the 39 whose home is greater than 20 metres but less than 150 metres, that they should carefully consider my advice and considered (a) whether to declare an NRI and (if so) (b) whether to withdraw from the meeting (applying the test set out in the Code of Conduct as set out above). In both of these cases, the proximity is substantially closer to 150 metres than 20 metres.

Thankfully, there have only been a handful of members caught by this. Whilst it is in my gift to offer a dispensation for the reasons listed below:

1. It is considered 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.

2. It is considered 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.
3. That the authority considers that the dispensation is in the interests of persons living in the authority's area.
4. That the authority considers that it is otherwise appropriate to grant a dispensation

I cannot see any justification currently under the Code for granting one.

It should be stressed that the distance between the proposed allocation and the properties owned by Councillors is only one potential factor which may give rise to a NRI. The onus is on all Councillors to consider whether there are any other reasons to declare an NRI and/or withdraw from the meeting.

I have therefore advised the single Councillor out of all 39 whose home is immediately adjacent to a proposed allocated site that they should declare an NRI.

I have further advised the two other Councillors out of the 39 whose home is greater than 20 metres but less than 150 metres, that they should carefully consider my advice and either declare or not declare an NRI as they see fit. In both of these cases, the proximity is substantially closer to 150 metres than 20 metres.

Some District Councillors are also County Councillors and therefore have a Declarable Interest by virtue of their role at County, but my advice is that unless they have had a particular involvement at County level that either predetermines their judgement or could be inferred as a particular bias to a particular point of view they are able to take part.

Conclusions

To reiterate, this advice has had input from two Barristers.

Officers have undertaken this analysis in the context of a relatively recent situation in Uttlesford in which a (now former) Councillor had a Standards complaint relating to declarations of interest partially upheld and thereafter published. Officers have therefore determined that it is better to be aware of any potential issues of controversy in this regard and address them calmly up front, rather than face a legal challenge after a (possibly close) vote that calls the outcome of that vote into question.

Not only would such a successful challenge undermine the authority's credibility but may cause significant delays in the ability of the Council to progress the Local Plan.

Chair, please could you now invite Councillors to declare their interest.