

Dual-hatted members

Scenario 1

A local business is making a planning application to convert the use of one of the buildings on its land from residential to business use. The land is within Allbright Parish Council.

Councillor Atkins is a councillor on Allbright Parish Council as well as Anchordale District Council. He has no ties with the business and does not live nearby.

Councillor Atkins is present at the parish council meeting, which is considering the application in its role as statutory consultee. He is also on the planning committee at Anchordale District Council and is likely to consider the application there also.

Does Councillor Atkins need to declare an interest at the parish or district council meetings?

Councillor Atkins does not have a personal interest arising from a registered interest, as the application does not relate to or likely to affect either of the councils of which he is a member. Neither will a decision in relation to the application affect his wellbeing or financial position to a greater extent than other council tax payers or inhabitants of the authority's area. He therefore does not need to declare any personal or prejudicial interest at either of the meetings.

What if Councillor Atkins was portfolio holder for land and property at the district council?

Councillor Atkins may have a personal interest if the application could be said to affect his well being. As Councillor Atkins has no ties with the business and does not live nearby, Standards for England does not believe that simply by virtue of his role as portfolio holder this would give rise to a personal interest.

Other than the declaration of interests, what other matters might arise from a councillor considering speaking and voting on an issue at two tiers of local government?

Dual-hatted members need to be mindful of the implications of predetermination. Members who choose to speak and vote at two tiers of local government, such as parish and principal levels, must not give the appearance of being bound only by the views of the parish. They will need to make clear that they will be prepared to reconsider the matter at principal level, taking into account all relevant evidence and representations made at that planning meeting. They must not give the impression that their mind is closed and their decision already made. Whilst predetermination and bias are common law rather than Code issues, they sometimes form the basis of allegations that the council has been brought into disrepute.

What should Councillor Atkins do if his brother owned the local business making the application?

A personal interest would need to be declared as the application can reasonably be regarded as affecting the well-being or financial position of Councillor Atkins' brother more than the majority of other people in the parish. Councillor Atkins would also have a prejudicial interest as the matter affects the financial position of his brother and this interest is one which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice his judgement of the public interest.

At the parish meeting?

He would only be able to put his view forward if the parish had adopted paragraph 12(2) of the Code allowing members of the public to speak on the issue. Councillor Atkins would have to leave the room before the item was discussed and would not be able to vote. This kind of interest is irrespective of Councillor Atkins' dual-hatted status.

And at the district meeting?

Again, Councillor Atkins would need to declare a personal and prejudicial interest; would have to leave the room before the item was discussed and would not be able to vote, but may speak on the matter if members of the public were allowed to speak.

What should Councillor Atkins do at parish / district level if he was not connected with the business making the application but he lived next door to the site?

Councillor Atkins may have a personal interest either because the application is likely to affect his land – a registered interest or because a decision in relation to the application might reasonably affect his well-being or financial position to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the authority's area.

A member can only have a prejudicial interest on the basis of a licensing or other regulatory matter if the planning application is made by them or a relevant person or body. Clearly this planning application was not made by Councillor Atkins or a relevant person or body.

However, Councillor Atkins can also have a prejudicial interest if the planning application would affect his or a relevant person's financial position by an increase or decrease in the value of his land and / or property. The financial position can be affected directly or indirectly, favourably or unfavourably, substantially or marginally. The definition is construed broadly and therefore the threshold for having a prejudicial interest can be fairly low.

Whilst living next door to the business making the planning application does not automatically give Councillor Atkins a prejudicial interest, Councillor Atkins would have to be very sure that a reasonable and objective observer with knowledge of all the relevant facts would not think such an application would affect Councillor Atkins' financial interests and prejudice his judgement.

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Scenario 2

Councillor Fitzpatrick is a councillor on Framley District Council. She is also a councillor on Fenchester County Council, and a member of the Cabinet there.

Framley District Council rent an office from Fenchester County Council.

There is a cabinet meeting at Fenchester County Council to discuss and vote upon the re-negotiation of the lease on the office.

**Does Councillor Fitzpatrick need to declare an interest at the Fenchester County Council cabinet meeting?
If so, what kind of interest?**

Councillor Fitzpatrick would have a personal interest as the decision relates to and will affect Framley District Council, a body of which she is a member and which will be on Councillor Fitzpatrick's register of interests.

As this decision will affect Framley District Council's financial interests this would also meet one of the criteria for it being a prejudicial interest. To serve the public interest as a Framley District councillor Councillor Fitzpatrick would be expected to secure the lowest possible rent. To serve the public interest as a Fenchester County councillor, Councillor Fitzpatrick would be expected to secure the highest possible rent. An objective observer would therefore reasonably conclude that this conflict of interest was so significant that it would prejudice her judgement of the public interest.

Councillor Fitzpatrick would have to declare a personal and prejudicial interest and not take part at the meeting.

Can Councillor Fitzpatrick vote on the issue at the Fenchester County Council cabinet meeting?

No. Councillor Fitzpatrick would have to leave the room when the item was being discussed.

Can Councillor Fitzpatrick speak about the matter at the meeting?

Councillor Fitzpatrick would have the same rights as a member of the public under paragraph 12(2) if the public were allowed to speak about the issue at the Cabinet meeting; Councillor Fitzpatrick would also be allowed to speak.

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Scenario 3

Councillor Burton is a councillor on Barnchester County Council. He is also a member of the planning committee on Belbury District Council.

Barnchester County Council is making a planning application to extend one of the buildings it owns. This application will be considered by Belbury District Council's planning committee.

**Does Councillor Burton need to declare an interest at the Belbury District Council planning meeting?
If so, what kind of interest?**

Councillor Burton would have a personal interest as the decision relates to and will affect Barnchester County Council, a body of which he is a member and which will be on Councillor Burton's register of interests.

As Barnchester County Council itself is the applicant for planning permission, this would engage the regulatory aspect of a prejudicial interest and the exemption from declaring a personal interest would not apply.

Standards for England would advise that in such an instance a councillor would need to declare a prejudicial interest as it is likely that a member of the public with knowledge of the relevant facts would reasonably conclude that this conflict of interest was so significant that it would prejudice his judgement of the public interest. [*]

Can Councillor Burton vote on the issue at the Belbury District Council planning meeting?

No. Councillor Burton would have to leave the room when the item was being discussed.

Can Councillor Burton speak about the matter at the meeting?

Councillor Burton would have the same rights as a member of the public regarding speaking on the matter.

[*] However, every case hangs on its own merits and it is always up to the councillor concerned to decide whether they have a prejudicial interest or not. As well as there needing to be a financial or regulatory aspect to an interest for it be prejudicial, a member of the public who knows the relevant facts must also reasonably think the councillor's interest is so significant that it is likely to prejudice their judgement of the public interest.

In scenario 3, Councillor Burton might argue that his interest in his county council's application to extend one of its buildings is not that significant and therefore decide to vote on the issue

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Scenario 4

Dainty Town Council owned and ran a leisure centre. The Town Council could not afford to keep the leisure centre open and it was forced to close. It now stands empty. The centre was used by people from all over the district.

Both Duncton District Council and Dainty Town Council would like to see the leisure centre re-opened. Duncton District Council wish to either purchase the leisure centre from Dainty Town Council and re-open it as a leisure centre or pay a regular subsidy to Dainty Town Council to re-open it themselves and keep it running.

Councillor Drinkwater is a councillor on both Dainty Town Council and Duncton District Council. She is due to consider the issue at a Duncton District Council meeting to decide on a suitable offer. She is also due sit on a Dainty Town Council meeting to decide whether to accept the offer or not.

Does Councillor Drinkwater need to declare an interest at the two council meetings?

If so, what kind of interest?

Councillor Drinkwater would have a personal interest as the decision relates to and will affect Dainty Town Council Council, a body of which she is a member and which will be on Councillor Drinkwater's register of interests.

As the decision will affect Dainty Town Council Council's financial interests this would also meet one of the criteria for it being a prejudicial interest.

Standards for England's view is that in such a situation Councillor Drinkwater would have to declare a prejudicial interest. (*)

Councillor Drinkwater may legitimately argue that the decision to re-open the leisure centre would be in the public's best interest as it was widely used by people across the district. She may not believe that there is a conflict of interest because both councils are working together in the public interest to get the leisure centre re-opened. Consequently she may not believe that an objective member of the public would reasonably think her interest so significant that it was likely to prejudice her judgement of the public interest. Councillor Drinkwater might therefore decide that she does not have a prejudicial interest and is able to vote on the issue.

Taking such a stance, however, will always leave a councillor vulnerable to a potential Code complaint.

Councillors are exempt from declaring a personal interest about an issue where their interest arises solely from membership of another local authority. However this exemption does not apply if the councillor:

- intends to speak on the issue
- also has a prejudicial interest in the issue

Technically, in the above situation the exemption from declaring a personal interest would apply if Councillor Drinkwater did not intend to speak on the matter. In the interests of transparency, however, it might be appropriate for Councillor Drinkwater to declare a personal interest.

(*) However, every case hangs on its own merits and it is always up to the councillor concerned to decide whether they have a prejudicial interest or not. As well as there needing to be a financial or regulatory aspect to an interest for it be prejudicial, a member of the public who knows the relevant facts must also reasonably think the councillor's interest is so significant that it is likely to prejudice their judgement of the public interest.

In scenario 3, Councillor Burton might argue that his interest in his county council's application to extend one of its buildings is not that significant and therefore decide to vote on the issue