

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO POLICY & FINANCE COMMITTEE

Agenda Item No.

meeting date: TUESDAY, 12 JUNE 2012  
title: CONSIDERATION OF DIVISION OF WISWELL PARISH COUNCIL  
submitted by: MARSHAL SCOTT, CHIEF EXECUTIVE  
principal author: DEBBIE NUTTALL, SOLICITOR

## 1 PURPOSE

- 1.1 To seek Committee's views on whether to undertake a further community governance review in relation to Wiswell Parish now or whether to request a community governance petition as a pre requisite for this.
- 1.2 Relevance to the Council's ambitions and priorities:
  - Community Objectives – See below.
  - Corporate Priorities - A strong and prosperous Ribble Valley arguably begins with strong local government at the Parish Council level.
  - Other Considerations – This is an issue about which certain Wiswell residents clearly feel very strongly.

## 2 BACKGROUND

- 2.1 Councillors may recall that the issue of whether Wiswell Parish Council should be split along ward, or other, lines to form separate parishes for Wiswell and Barrow has been considered by this Committee before.
- 2.2 Under the Local Government and Public Involvement in Health Act 2007 ("**the Act**") (except where this Council receives a community governance petition), the Council has a discretion to undertake a community governance review ("**CGR**").
- 3.2 This Committee elected to carry out such a review without a petition (Tuesday 24 March 2009 report and minutes), largely due to the long-running history of this matter. Councillors are referred to the March 2009 report for further details on this.
- 2.3 The review was carried out and the original deadline was extended (to 14 October 2010).
- 2.4 On 16 November 2010, following the subsequent consultation on whether to divide Wiswell Parish into two separate parishes; a decision report was presented to this Committee by the Council's Solicitor, Mrs Nuttall.
- 2.5 Rather than adopting either of the two recommendations, after some discussion the November 2010 Committee decided to set up a working group to try to understand the issues/problems and that a further report be brought to a later Committee.
- 2.6 A meeting was set up on 11 January 2011.

- 2.7 The Council's Solicitor understands that at this meeting the Parish Council decided to continue to operate under the umbrella of one Parish Council but with appropriate division of duties, funds and responsibilities in certain areas.
- 2.8 There was no formal report back to Committee, although officers had understood that the new system was working reasonably well.
- 2.9 On 28 March 2012 the Council's Head of Legal and Democratic Services received a letter from the new Parish Clerk of Wiswell, Mrs Victoria Wilson, advising that the system of Committees is not working, is impractical and is not in the interest of either village. The letter asks that RVBC "now proceeds with the division".

### 3 ISSUES

- 3.1 It is no longer open to the Council to "proceed with the division." Principal councils are required to complete a CGR within 12 months of beginning it. According to the Act a Council "begins" a CGR when it publishes the terms of reference of the review and concludes" it when it publishes the recommendations made in the review. Based on this, we began the review (at the latest) in August 2010 when we sent out the letter to residents and thus were duty bound to complete it by August 2011.
- 3.2 The Council should have published the results of our decision and our reasons for taking it when the last review was completed. Given the "compromise" reached, we did not do this. However, as the statutory timeframe only permits a year, the last CGR is now over.
- 3.3 The Parish Council were recently unanimous in their decision to divide the Parish Council.
- 3.4 Councillors may recall that when the CGR was carried out the (75) residents in Wiswell who responded were unanimously in favour of a split. However, there was a small response from Barrow residents (7) who were not in favour of a split.
- 3.5 The Council's Solicitor is aware of a High Court decision where Stockport Metropolitan Borough Council's decision to abolish Offerton Park Parish Council, based on a poll where less than 17 per cent of the electorate voted, was overturned. This case illustrates the dangers for a Council of discounting the wishes of the "silent majority".
- 3.6 In contrast a Wiswell resident complained that the last consultation was unfair because consultation responses were treated as responses from individuals, rather than whole households.
- 3.7 Whatever the outcome of the previous review, some residents within Wiswell and the current Wiswell Parish Council clearly remain strong in their view that the Parish should be split.
- 3.8 In considering the Wiswell Parish Council's recent request, Councillors may wish to bear in mind the following:
  - 3.8.1 The Council **may** undertake a CGR, i.e. it has a power to do so and a discretion as to whether or not to do so in most circumstances (section 82 of the Act).

- 3.8.2 The Council **must** undertake a CGR if it receives a valid CG petition which relates to the whole or part of its area ie if it receives a valid Community Governance Petition, the Council loses its discretion. (Section 83(1) and (2) of the Act).
- 3.8.3 The above duty does not apply if the Council has concluded a CGR which covers the area of a CG petition within two years, i.e. the discretion still applies within the two-year period after a CGR. (Sections 83(3) and 85(1) and (2) of the Act).
- 3.8.4 A Community Governance Petition is only valid if certain conditions are met. It must, for example, be signed by at least 250 of the electors if the petition area has between 500 and 2500 local government electors. Wiswell Parish has 849 electors (based on the rolling register of electors) and therefore falls within this category (assuming that the area to which the review were to relate was that covered by the Wiswell Parish).
- 3.9 There appear, therefore, to be three options open to Councillors:
- 3.9.1 OPTION ONE: Advise the Wiswell Parish that no CRG will be carried out unless and until two years since the end of the last review has expired **and** the Council receives a valid CG petition.
- 3.9.2 OPTION TWO: Advise the Wiswell Parish Council that the Council will undertake a CGR provided that it receives a valid CG petition.
- 3.9.3 OPTION THREE: Advise the Wiswell Parish Council that the Council will undertake a CGR now, without any need for a valid CG petition.
- 3.10 The Council's Solicitor does not feel that OPTION ONE is appropriate. It defers dealing with the issue, rather than addressing it. As August 2013 will soon be upon us, the deferral would be a short one.
- 3.11 As to the other two options, arguments could be made for each.
- 3.12 OPTION TWO has the advantage that the resources entailed in carrying out a further CGR would only be expended if there was sufficient support for this within the Wiswell Parish. Moreover, as the "pro-split" team might drum up support for the split whilst collecting sufficient signatures for a valid petition, this might also help to ensure that the ultimate results of any consultation carried out as part of the CGR are more conclusive than those of the last CGR. For example, if residents in Barrow are willing to sign up to such a petition, presumably they would also be willing to vote in favour of a split.
- 3.13 OPTION THREE has the advantage that it would placate the wishes of the Wiswell Parish Council, who have already tried other compromise options, and those of the Wiswell residents, who, for some time now, have pushed to have a separate Parish Council of their own.
- 3.14 Carrying out a CGR is time-consuming and costly. However, if a split is something that the residents and Parish want, the Council should properly consider it. As a review was carried out relatively recently, some of the ground-work is already in place.

3.15 Actually splitting the Parish -should a CGR be carried out and conclude that this is what residents favour - would also be resource intensive and costly. If a CGR concludes that this is what the residents of Wiswell Parish want, the Council should facilitate it.

#### 4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – Legal time, financial time, postage, paper etc would all be expended in carrying out a CGR. Previously the Solicitor carried out the five-year electoral forecasts herself, as external consultants were considered too expensive. A split could also impact other areas of the Council (eg re-inputting council tax data etc; dividing up assets etc).
- Technical, Environmental and Legal – The Act and Guidance set out what is required.
- Political – There is strong support from some Wiswell residents for a split. The Council's Solicitor feels that the decision between options 2 and 3 is a political one.
- Reputation – The Council will be mindful of the long-running history to this matter and the Parish Council's efforts to make a "middle-ground" solution workable.
- Equality & Diversity – The Council must be mindful that the will of the forceful majority is not imposed upon the silent majority.

#### 5 **RECOMMENDED THAT COMMITTEE**

5.1 Either:

5.1.1 decide that a community governance review will only be carried out for the Parish of Wiswell should a valid community governance petition be received in respect of the same and direct the Council's solicitor to advise the clerk to the Parish; or

5.1.2 decide that a community governance review should be carried out for the Parish of Wiswell and direct the Council's Solicitor to commence work on this immediately.

MARSHAL SCOTT  
CHIEF EXECUTIVE

DEBBIE NUTTALL  
SOLICITOR

#### BACKGROUND PAPERS

None.

For further information please ask for Debbie Nuttall extension 4403 (Mondays to Wednesdays).

REF: DLN/DLN/P&F/120612