

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO POLICY AND FINANCE COMMITTEE

Agenda Item No.

meeting date: 26 MARCH 2013
title: DIVISION OF WISWELL PARISH COUNCIL
submitted by: MARSHAL SCOTT, CHIEF EXECUTIVE
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1 PURPOSE

- 1.1 To inform Members of progress on this issue and conclusions recently reached by officers.
- 1.2 To seek members' authorisation for the Council's Solicitor, in consultation with its Chief Executive and Leader, to continue progressing this matter.
- 1.3 Relevance to the Council's ambitions and priorities:
 - Community Objectives – Better community governance should facilitate community cohesion and local involvement in local decision-making. This, in turn, should help to make people's lives safer and healthier and enhance the local environment.
 - Corporate Priorities – Improved community governance is linked to the Council's vision of ensuring that the Ribble Valley has vital and vibrant villages, meeting the needs of residents, in that it should help to empower those residents.
 - Other Considerations – This is the next step in achieving a formal split of the Parish. The decision to formally split the Parish was made by this Committee in November 2012 following a Community Governance Review.

2 BACKGROUND

- 2.1 Members will be aware of the long-running history to this matter. This has been set out in the numerous reports to this Committee.
- 2.2 At its meeting on 20 November 2012, this Committee resolved to adopt recommendations concerning the division of the Parish for the reasons proposed and authorise the Council's Solicitor to draft a Reorganisation Order and liaise with others to implement the recommendations.
- 2.3 The Council's Solicitor wishes to update members on progress and seek their views on matters.

3 COMMUNITY GOVERNANCE REVIEW

- 3.1 The recommendations agreed by Committee in November 2012 have been published and residents have been informed of them. This concluded the Review.

4 ISSUES

4.1 There are various documents pertinent to the split of a Parish:

- Central Government Guidance on Community Governance Reviews (“the **Guidance**”);
- Part 4 of the Local Government and Public Involvement in Health Act 2007 (“the **Act**”);
- A Model Order produced by the Department (“the **Model Order**”);
- The Local Government (Parishes and Parish Councils) (England) Regulations 2008 (“the **Parish Regulations**”);
- The Local Government Finance (New Parishes)(England) Regulations 2008/626 (“the **Finance Regulations**”).

4.2 The Council’s Solicitor has been using these documents in order to draft an Order to split the Parish. The draft Order will be based on the Model Order but tailored to the facts. It seeks to take account of the Parish and the Finance Regulations and the Guidance.

4.3 Decisions have been required to finalise the draft Order. These are considered below.

5 ELECTORAL ARRANGEMENTS

5.1 Most of the provisions in the Order have to come into force on 1 April of a given year. This is because precepting authorities can only issue precepts for entire financial years.

5.2 The approved and published recommendations provided that the ordinary elections for each Parish (Barrow and Wiswell) would be held every four years commencing in May 2015. Five parish councillors would be appointed to each Parish (this is the legislative minimum) and neither parish would be divided into wards.

5.3 The Council’s Solicitor has been attempting to ensure that the split takes effect as quickly as possible. April 2013 proved impossible as a start date for the Order, largely due to administrative tasks concerning council tax records. The Council’s Solicitor was therefore aiming for a split commencing in April 2014.

5.4 May 2015 is the date of the scheduled local elections and, as she was tasked with keeping matters as simple and cost effective as possible, the Council’s Solicitor therefore chose this as the proposed election date in the recommendations for the new parish of Barrow and for Wiswell.

5.5 If the arrangements took effect from 1 April 2014, this would have meant a year of interim arrangements (i.e. Barrow created in April 2014, but its first elections not being held until May 2015). The Guidance suggested that this would usually be the case but added that it was possible to change electoral arrangements from the usual cycle.

5.6 The Guidance and the Parish Regulations, however, provide conflicting advice on whether it is possible to change the date of the first election for both the new parish of Barrow and the amended Parish of Wiswell. The Council’s Solicitor has written to the

Department for Communities and Local Government to seek guidance (as they produced both documents). She is still awaiting their response.

- 5.7 As some of the Parish Councillors elected to the existing Wiswell Parish might wish to represent Barrow once it exists, it would clearly be beneficial if the new arrangements could commence at the same time.
- 5.8 The Council's Corporate Management Team discussed this issue briefly and concluded that it would be preferable to keep the election date as 2015. The Council's Solicitor then discussed the matter with the Chief Executive.
- 5.9 Having considered the issues and the pros and cons of various options (including the uncertainty as to whether or not it is legally possible to shorten the terms of existent Wiswell Parish Councillors to allow for a "new start" in 2014 and the incumbent need to amend the recommendations, were elections to be held a year earlier), the Council's officers consider that the most sensible approach would be for the split to take effect from **April 2015**, with elections taking place as scheduled in May 2015. This would result in a relatively short interim period for the new parish of Barrow to "exist" without elected parish councillors.
- 5.10 Whilst this means that the new parish would not "formally" exist for some time, once it does exist it will do in "real terms" with (hopefully) active elected members representing it almost immediately.
- 5.11 In order to ensure that everything is ready for the 2015 split, it is suggested that the existing Parish Council and its clerk, with support from this Council's Solicitor, might prepare for the split by creating "shadow" parish teams. As ward members already exist, this should be relatively easy to achieve.

6. SHADOW CLERK

- 6.1 Once the new Parish of Barrow is formed, it will need an officer - Parish Clerk - to act on its behalf. The newly elected Barrow Parish Councillors will decide who this should be when they first meet and accept their office etc.
- 6.2 Some arrangements will need to be made before this point (e.g. to call that first meeting). It would be preferable for someone to be in place to carry out these tasks in a shadow Clerk role as soon as possible.
- 6.3 The current Clerk for the Wiswell Parish, Mrs Victoria Wilson, has kindly agreed to act as "shadow clerk" for the inchoate Barrow Parish Council, as well as continuing to act as clerk for Wiswell Parish Council. This has clear advantages to all concerned, as, initially at least, there is likely to be some overlap in the work of the Parishes.

7. COUNCIL TAX RECORDS, BUDGET AND PRECEPTS

- 7.1 The Council's Solicitor has used maps, council tax records and electoral roll data to reconcile properties with parishes.
- 7.2 As noted above, the Order will, for most purposes, take effect on 1 April 2015 (pushed back from 1 April 2014 due to the election date issue). This gives the Head of Revenues

and Benefits time to make the necessary changes to council tax records and should ensure that the Council is in a position to assess how many band-D-equivalent properties there would be in each area by October 2014 for the purposes of estimating the precept for the first year of Barrow's existence.

- 7.3 The Finance Regulations provide that the Order must specify a sum for the purposes of its Regulation 3. This sum has not yet been established. The notes to the Model Order explain that: "the article which specifies an amount in relation to the new parish must come into force early so as to enable the billing authority to anticipate a precept equivalent to that amount when making its calculations in accordance with section 32 of the Local Government Finance Act 1992 (see Reg 3 of the Local Government Finance (New Parishes) Regulations 2008."
- 7.4 Regulation 3(1)(b) of the Finance Regulations provides that for the period between the Order being made and the new parish issuing a precept, the Finance Regulations will have application.
- 7.5 Regulation 3(2) provides that this Council has to anticipate the precept for the new parish by taking into account the amount in the Order (i.e. because there is no parish to issue a precept, this figure is used instead).
- 7.6 The new parish, under Regulation 3(4) then has to budget to this figure when making its section 49A 1992 Act calculations. Given this, they should be consulted first.
- 7.7 Regulation 5 of the Finance Regulations applies in relation to the Barrow parish council for the financial year in which it is constituted. It provides that Barrow Parish Council's precept must be issued before October of that year.
- 7.8 The Council's Solicitor has responded to the audit commission who had queries concerning when the new Parish would come into existence. The Council's Solicitor will keep them apprised of key future decisions.

8 ELECTORAL REGISTRATION

- 8.1 The new Parish of Barrow will be formed from polling district "CT1- Barrow". The smaller parish of Wiswell will be formed from polling district "CS – Wiswell".
- 8.2 The Council's Solicitor has checked the records and all properties are "in the right place," i.e. CT1 for Barrow or CS for Wiswell.
- 8.3 As the polling districts are already grouped in line with the new parish boundaries, the administrative task of amending the electoral register should be made easier. The Order delegates responsibility for this to the electoral registration officer.

9. THE PARISH REGULATIONS

- 9.1 Regulation 3 of the Parish Regulations explains that the Regulations make incidental, consequential, transitional and supplementary provisions for the purposes and in consequence of reorganisation orders. They apply in relation to every reorganisation order.

9.2 Regulation 7(2) provides that property in the transferred area automatically passes to the council of the transferee parish. This is subject to Regulation 7(1). This, in turn, provides that nothing in the regulation shall apply to any property held by an authority, as sole trustee, exclusively for charitable purposes.

9.3 The Council's Solicitor and Wiswell's Parish clerk have considered:

- the conveyance for the playing fields;
- the register of title for the land at Trafford Gardens;
- the register of title for the land adjacent to Washbrook Close; and
- a register extract on the Joint burial ground.

None of these properties are held for charitable purposes (the top three do have covenants ensuring the land is used for recreational use only). The transfer of property can therefore be dealt with relatively easily and will be set out in the Order.

9.4 Wiswell Parish Council explained that the title deeds for the Whalley and Wiswell Joint Burial Committee will need revision. The clerk to this burial committee has written to the Council's Solicitor seeking clarification as to whether they will be required to implement any legal work in connection with the split, or whether the Council's solicitor will be undertaking this work. The Council's Solicitor intends to write back to the clerk explaining that they will need to take their own advice but requesting sight of their documents. It may be that any property, rights or liabilities in relation to the area of Barrow covered by the burial committee can be transferred by the order. This, however, will be subject to Regulation 4 of the Parish Regulations which explains that nothing in those Regulations shall affect:

"... (d) any right:

(i) of burial; or

(ii) to construct a grave or vault; or

(iii) to place maintain or inscribe a tombstone or memorial."

9.5 Once these issues have been explored then, in so far as it can do so, the Order will deal with them.

10. AUTHORISATIONS

10.1 Part 3(1) of the Council's Constitution ("the powers and duties of the Council and its committees"), sets out, at Part 2, those matters which are reserved to meetings of the Full Council. These include, at point 9: "Making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills."

10.2 As the Order is a piece of local legislation, full Council must sanction the making of it.

- 10.3 This Committee is therefore asked to make decisions as to the content of that Order, but authority for the making of the order would have to be dealt with as a starred item at full council.
- 10.4 The Council's Solicitor intended to bring a draft Order to this committee. Discussions on electoral arrangements have rendered this draft inappropriate.
- 10.5 Provided that this committee is content with a 2015 start date and 2015 first election date, the Council's Solicitor will draft an order on this basis. She will then present this to this committee with a view to the full Council making the order on or before 1 April 2014 (with 1 April 2015 being the date at which most of its provisions will come into force). This will give a year in which shadow arrangements can be established, precedents/standing orders etc. created for the new Parish to use.

11 RISK ASSESSMENT

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

- Resources – work is continuing on progressing this matter.
- Technical, Environmental and Legal – legal and technical implications and concerns are set out in the file on this matter.
- Political – members have already committed the council to splitting the parish.
- Reputation – as above.
- Equality & Diversity – no concerns arising.

5 RECOMMENDED THAT COMMITTEE

- 5.1 Approve the decisions made to date, in particular, confirm that the Order should (with the exception of some issues, such as electoral arrangements) come into force on 1 April 2015; and
- 5.2 Authorise the Council's Solicitor, in consultation with its Chief Executive and Leader, to continue progressing this matter.

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BACKGROUND PAPERS

Files in Solicitor's room on Wiswell and Barrow split.

For further information please ask for Debbie Nuttall extension 4403.

REF: Debbie Nuttall/P&F/26March 2013