

Community Governance Review Sub Committee

Date of Meeting: 08 November 2018

Report Title: Community Governance Review Terms of Reference

Portfolio Holder: Councillor J Paul Findlow, Corporate Policy and Legal Services

Senior Officer: Brian Reed, Head of Democratic Services and Governance

1. Report Summary

- 1.1. The Constitution Committee at its meeting on 20th September 2018 resolved that:
 1. a Borough-wide review of the governance arrangements of all of the Borough's town and parish councils be undertaken, commencing as soon as reasonably practicable after the 2019 all-out elections, and concluding well in advance of the May 2023 elections;
 2. a sub-committee of the Committee be appointed to conduct the review, working with an officer working group, and make appropriate recommendations to the Constitution Committee for decision; and
 3. the sub-committee comprise representatives of all of the Council's political groups, on the basis of the following proportionality: 4:1:1:1 (Conservative: Labour: Independent: Liberal Democrat), drawn from the Constitution Committee, provided that the Liberal Democrat Group representative shall be nominated by its Group Leader.
- 1.2. This report constitutes the proposed terms of reference for the review for the Sub-Committee's consideration and recommendation to the Constitution Committee.

2. Recommendations

- 2.1. That
 - 2.1.1. The Sub-Committee note and endorse the contents of this report for consideration by the Constitution Committee; and

2.1.2. The Sub-Committee agree that the report in itself constitutes the terms of reference of the Community Governance Review, and endorse its publication as being the commencement of the Community Governance Review.

3. Terms of Reference of the Community Governance Review

3.1. The terms of reference of the Community Governance Review are set out in this section of the report as follows:

Introduction

1. Cheshire East Borough Council has decided to undertake a Community Governance Review (Review) of the governance arrangements of all of the parishes in its area.
2. This Review will relate to the whole of the Borough, in order to consider making changes to parish areas and parish electoral arrangements; and potentially the alteration, merging, creation and abolishing of parishes, the naming of parishes and the adoption of an alternative style for new parishes. It might also involve changes to the electoral arrangements for parishes (the ordinary year of election; the council size; the number of councillors to be elected to the council, and whether to divide the parishes into wards for the purposes of elections).
3. In some cases it might be appropriate to group parishes under a common parish council or to de-group existing groupings of parishes.
4. Whilst the primary focus of the Review will be town and parish council matters, the outcome will be presented to the Local Government Boundary Commission for England, which has responsibility for Borough Council ward matters. In a limited number of instances, the Council may wish to request the Commission to alter a Borough ward boundary so that it is coterminous with a parish boundary. There may also be a need to make changes that arise in consequence of the Review (termed “consequential matters”), and these might include provisions for the transfer of parish council staff, property and assets, or the setting of precepts for any new parish councils that may be formed.
5. The Boundary Commission for England has power to alter Borough ward boundaries.
6. At present, there are 142 parishes in the Borough. Of these, 27 are divided into parish wards for the purposes of parish elections. There are 1,018 parish councillors, with each parish councillor representing an average of 296 electors. However, the electoral quota (the ratio of electors to parish councillors) varies widely, and ranges from one councillor to eight electors to one to 3,703 electors across the Borough. There are 44 parishes that are grouped under common councils and

there are 16 such parish councils. At the last ordinary parish elections in 2015, 46 (27% per cent) of the 186 parish ward elections were contested and led to a poll. However, 125 of the 1,018 parish council seats remained unfilled at the close of the last ordinary elections. Many of these vacant seats have since been filled under the parish councils' powers of co-option. Parish precepts (the amount that each parish requests to be raised from council tax) vary widely as do the council tax band D equivalents (the average council tax charged to the households of the parish) between the different parishes, with the band D equivalents ranging from £7.49 to £108.64 across the parishes of the Borough.

7. The Council will produce maps and data sets to provide further statistical information on these matters.
8. The Council considers that the present structure of parish governance serves its residents well, and it is not considered that extensive changes will follow from the Review. However, the present arrangements pre-date the creation of the Council in 2009, and were put in place by the demised authorities. The Council is mindful that there has been considerable change to the population and geography, as well as to the settlements of the Borough following housing developments since that date. The Local Plan also has a bearing on the Review, given that housing allocations have been made which have not yet been implemented.
9. The Review offers the opportunity to ensure that the tier of parish governance is fit for purpose for the future.
10. The data sets that the Council will produce will show the areas in which new development is programmed, especially over the next five-year period between 2019 and 2024, and will provide electorate forecasts for this period. These will be provided because the Council is required to consider any change in the number or distribution of the electors that is likely to occur over the period of five years when it considers parish electoral arrangements.
11. In undertaking the Review, the Council will adhere to Part 4 of the Local Government and Public Involvement in Health Act 2007 (as amended) ("the 2007 Act") and the relevant parts of the Local Government Act 1972 in its work. The following regulations apply, in particular, to consequential matters arising from the Review: Local Government (Parishes and Parish Councils) (England) Regulations 2008 (SI2008/625), and Local Government Finance (New Parishes) Regulations 2008 (SI2008/626). The Department of Communities and Local Government and the Local Government Boundary Commission for England has issued Guidance on Community Governance Reviews in accordance with section 100(4) of the 2007 Act in March 2010, and the Council will have regard to "the Guidance".

12. Links to the 2007 Act and the Guidance are provided here:

<http://www.legislation.gov.uk/ukpga/2007/28/contents>

<http://www.lgbce.org.uk/how-reviews-work/other-types-of-review/about-community-governance-reviews>

13. Section 93 of the 2007 Act requires the Council to consult the local government electors for the area under Review and any other person or body who appears to have an interest in the Review, and to take the representations that are received into account by judging them against the criteria in the 2007 Act and in these Terms of Reference. The Council will publish its plan for consultation during the Review, and this will include the receiving of submissions to assist the Council in preparing its draft proposals together with an appropriate period of consultation on those proposals. The Council is also required to publish all decisions taken as part of the Review and the reasons for taking those decisions.

14. The contents of this report comprise the Terms of Reference of the Review, and the Council publishes these Terms of Reference in accordance with Section 81 of the 2007 Act.

Parish Areas

15. In this part of the Terms of Reference, further consideration is given to parish areas, an element of the review that may lead to the creation of new parishes, altering the boundaries between existing parishes and, possibly, abolishing some existing parishes.

16. In particular, the Council is mindful that it is many years since the last Review of parishes was conducted within what is now the Borough of Cheshire East, and during that interval there has been considerable new development accompanied by a new distribution of population in the Borough. Many of these developments have traversed parish boundaries and have created new communities of identity. Housing allocations in the Local Plan will have the same effect.

17. Section 93(5) of the 2007 Act requires that the Council must have regard to the need to secure that the tier of parish governance:

- reflects the identities and interests of the different communities in the area. The Council considers that this is a 'community of identity' test, which is especially applicable to the new developments that presently traverse parish boundaries.
- is effective and convenient. The Council considers that this is a 'viability' test, and the Council is anxious to ensure that parishes are viable and possess a precept that enables them to actively and effectively promote the well-being of their residents and to

contribute to the real provision of services in their areas in an economic and efficient manner.

- takes into account any other arrangements for the purposes of community representation or community engagement in the area that reinforce the 'community of identity' test.

18. The Guidance (paragraphs 46-48) emphasises that electors should be able to identify clearly with the parish in which they are resident, because it is considered that this sense of identity and community lends strength and legitimacy to the parish structure, creates a common interest in parish affairs, encourages participation in elections to the parish council, leads to representative and accountable government, engenders visionary leadership and generates a strong, inclusive community with a sense of civic values, responsibility and pride.
19. The Borough of Cheshire East is entirely parished and there are no areas of the Borough that do not lie within a parish. The Council notes that the Guidance states that "the abolition of parishes should not be undertaken unless clearly justified" (paragraphs 117-124). The Council intends that the whole of Cheshire East shall continue to be divided into parish areas and there is a strong presumption that, with the possible exception of a few very small parishes, all the Borough's parishes shall have parish electoral arrangements.
20. The Council considers that the boundaries between parishes will normally reflect natural and man-made defining points between communities. These defining points will be either natural or man-made: they might include rivers or man-made features such as railways or motorways – those defining points that create a community of identity. The views of local residents and the parish councils will have an important bearing in this matter.
21. Where changes to boundaries are considered appropriate, the Council will endeavour to select boundaries that are and are likely to remain easily identifiable.
22. The Council considers that 'natural' settlements or settlements as they are defined in the documents that make up its Local Plan, including the Local Plan Strategy (adopted 2017) should not in normal circumstances be partitioned by parish boundaries.
23. The Council recognises that, in its rural area, a strong sense of community can prevail over an extensive but otherwise sparsely populated area. Parishes in these areas may have limited capacity to facilitate service provision and effective local government; even so, arrangements in these areas, when they accord with the wishes of the inhabitants of the parish, will at least represent convenient local government.

The Grouping of Parishes

24. A grouping arrangement for parishes may best be considered as a working alliance of parishes that have come together under a common parish council, with the electors of each of the grouped parishes electing a designated number of councillors to the council. It has been found to be an effective way of ensuring parish governance for small parishes that might otherwise be unviable as separate units, while retaining their separate parish identity. Under section 94 of the 2007 Act, new parishes of less than 150 electors will be unable to establish their own parish council.
25. At present, there are 16 grouping arrangements, involving 44 parishes, in operation in Cheshire East Borough. There are six parishes, outside the grouping arrangements, that have fewer than 150 electors. In a further seven of the Borough's 142 parishes there is no parish council, and the representative body in those parishes is their parish meeting which must meet at least twice each year.
26. The Council will consider whether a grouping arrangement may be an appropriate way forward for small parishes while noting the Guidance (paragraph 114) that "it would be inappropriate for it to be used to build artificially large units under single parish councils."

Names and Styles

27. The Council does not envisage that there will be many changes of parish names in this Review. Where it might be necessary to consider forming a new parish, the Council will endeavour to reflect existing local or historic place-names, and will give a strong presumption in favour of names proposed by local interested parties. However, the Council considers that composite names of parishes are rarely in the interests of effective and convenient local government. The Council would wish to avoid composite names other than in exceptional circumstances where the demands of history, local connections or the preservation of local ties make a pressing case for the retention of distinctive traditional names.
28. The 2007 Act introduced 'alternative styles' for parishes by inserting section 17A into the Local Government Act 1972. This allows existing parish councils (or the Borough Council during a community governance review) to adopt an 'alternative style' to replace the style "parish". However, only one of three prescribed styles can be adopted: "community", "neighbourhood" or "village".
29. Where a new parish is being created, the Council will make recommendations as to the name of the new parish and whether or not it shall have one of the alternative styles. Where an existing parish is under Review, the Council will make recommendations as to whether

the name of the parish should be changed, but it will be for the parish council or parish meeting to resolve whether the parish should have one of the alternative styles.

Electoral Arrangements

30. An important part of the Review will cover the electoral arrangements of the parishes, including any new parishes that are formed. The term 'electoral arrangements' covers the way in which a council is constituted for the parish, including:

- the ordinary year in which elections are held;
- the number of councillors to be elected to the council;
- the division (or not) of the parish into wards for the purpose of electing councillors;
- the number and boundaries of any such wards;
- the number of councillors to be elected for any such ward;
- the name of any such ward.

These matters are considered in turn.

Ordinary year of election

31. The next elections for parish councils in Cheshire East are programmed for 2019. As agreed by the Council's Constitution Committee, the Review will have no implications for those elections.

32. It is intended that the Review should be completed well before the elections scheduled for 2023. In particular, it will be necessary to ensure that the Review is completed to allow the various commencement requirements (setting the parish precepts, altering electoral registers, altering council tax bases, etc.) to be in place in good time for those elections.

A council for a parish

33. Section 94 of the 2007 Act sets out the duties that the Council has with regard to the creation of a council for a parish:

- where the number of electors is 1,000 or more – a parish council must be created;
- where the number of electors is 151-999 – a parish council may be created, with a parish meeting being the alternative form of parish governance;
- where the number of electors is 150 or fewer – a parish council is not created.

34. The Council holds a strong presumption in favour of the formation of parish councils for all parishes of more than 150 electors.

The number of parish councillors

35. The Council notes that the number of parish councillors for each parish council shall not be less than five (section 16, Local Government Act 1972). There is no maximum number in the legislation and there are no rules or guidance relating to the allocations of councillors. The Guidance (paragraph 156) states that “each area should be considered on its own merits, having regard to its population, geography and the pattern of communities,” and therefore the Council is prepared to pay particular attention to existing levels of representation, the broad pattern of existing council sizes which have stood the test of time and the take-up of seats at elections in its consideration of this matter.

36. The Guidance (paragraph 157) makes the point “that the conduct of parish council business does not usually require a large body of councillors”. The Council will look at those parishes where there has been a history of uncontested elections and/or the need to co-opt members in order to fill vacancies, questioning whether the present levels of representation are appropriate or whether there is a ‘democratic surplus’ in a parish.

37. Section 95(6-7) of the 2007 Act also requires the Council to have regard to the following factors when considering the number of councillors to be allocated to a parish:

- the number of local government electors for the parish;
- any change in that number which is likely to occur in the period of five years beginning with the day when the Review starts.

38. The following factors will also be important considerations for the Council as it looks at parish council sizes:

- the different demands and consequently different levels of representation that are appropriate between urban and rural parishes;
- the level of the precept and levels of service provision;
- the challenges of population sparsity and securing an appropriate level of representation in such areas;
- the traditional scale of representation in a particular parish;
- the need to support a warding arrangement in a particular parish and achieving a good parity of representation between wards.

39. The data sets that the Council will publish will provide important information on all these matters.

Parish warding

40. The 2007 Act (section 95(3)) requires that, on considering whether a parish should be divided into wards for the purposes of elections of the parish council, the Council should consider the following:

- whether the number, or distribution, of the local government electors for the parish would make a single election of councillors impracticable or inconvenient;
- whether it is desirable that any area or areas of the parish should be separately represented on the council.

41. Whilst the Council will consider each case on its merits in line with these criteria, it also considers that warding arrangements should be clearly and readily understood by and should have relevance for the electorate in a parish; they should reflect clear physical and social differences within a parish, whether urban or rural: one parish but comprising different parts. Furthermore, ward elections should have merit; not only should they meet the two tests laid down in the Act, but they should also be in the interests of effective and convenient local government. The additional costs of multiple ward elections should not be wasteful of a parish's resources.

The boundaries and names of parish wards

42. The Council emphasises that parish ward boundaries should be clearly understood; and should take account of community identity and interests within a parish that comprises different parts. Where there is the need to do so, every attempt will be made to fix ward boundaries that are, and will remain, easily identifiable, as well as taking into account any local ties which might be broken by the fixing of any particular boundaries. These requirements are laid down in section 95(5) of the 2007 Act.

43. The Guidance (paragraph 163) has suggested a further relevant consideration. Whilst it is understood that the Local Government Boundary Commission for England has no current intention of doing so; when it undertakes a review of the Borough electoral wards, it is prohibited from splitting an unwarded parish or a parish ward by a Borough electoral ward boundary. This legal restriction does not apply to Reviews of parish electoral arrangements undertaken by the Borough Council, but the Commission has requested that the Council bear this in mind, which the Council will do. It is noted that the Review may result in a loss of coterminosity between Borough electoral ward boundaries and parish and parish ward boundaries, which will be undesirable for the

effective conduct of elections and that may not be resolved in the short term.

44. In the naming of parish wards, the Council will be mindful of existing local or historic place names, and there will be a presumption in favour of ward names proposed by local interested parties.

The number of councillors to be elected for parish wards

45. The Council has noted that the 2007 Act (paragraph 95(5)) requires it to have regard to the following when considering the number of councillors to be elected for each ward:

- the number of local government electors for the parish;
- any change in the number, or distribution, of the local government electors which is likely to occur in the period of five years beginning with the day when the Review starts.

46. The Guidance (paragraph 166) has advised, and this Council concurs, that “it is an important democratic principle that each person’s vote should be of equal weight so far as possible, having regard to other legitimate competing factors, when it comes to the elections of councillors” to a parish council. While there is no provision in legislation that each parish ward councillor should represent, as nearly as may be, the same number of electors, the Council concurs with the Guidance that it is not in the interests of effective and convenient local government, either for voters or councillors, to have significant differences in levels of representation between different parish wards.

47. The Council is likewise anxious to avoid the risk that, where one or more wards of a parish are over-represented by councillors, the residents of those wards (and their councillors) could be perceived as having more influence than others on the council. During the Review process and in its consultations, the Council is committed to consistently showing the ratios of electors to councillors that would result from its proposals.

48. The foregoing considerations, which are considered to be equitable, will also guide the Council when it considers the number of councillors to be elected to a common council by each parish within a grouping arrangement.

Consequential Matters

49. The Review will be completed when the Council adopts the Reorganisation of Community Governance Order. This Order may cover any consequential matters that appear to the Council to be necessary or proper to give effect to the Order. These may include:

- the transfer and management or custody of property;
- the setting of precepts for new parishes;
- provision with respect to the transfer of any functions, property, rights and liabilities;
- provision for the transfer of staff, compensation for loss of office, pensions and other staffing matters.

50. In these matters, the Council will be guided by the 2007 Act and the regulations referred to above.

51. The Council is mindful that it may recommend that the Local Government Boundary Commission for England make alterations to the boundaries of the Borough electoral divisions to reflect changes made at parish level. The Council notes that it will be for the Commission to decide if related alterations should be made and, if so, when they should be implemented, and that the Commission may find it appropriate to conduct an electoral Review of affected areas.

52. Earlier in this document it was noted that, in a limited number of instances, the Council may wish to request the Local Government Boundary Commission for England to alter a Borough ward boundary so that it is coterminous with a parish boundary.

What Happens Next in the Review

53. The Council is establishing a Review website where it will publish maps and data sets to support the Review. Paper copies of these documents will be available at the Council's main offices at Westfields, Macclesfield Town Hall and Municipal Buildings, Crewe.

54. The Council will also commence a process of consultation, including providing briefings for the parish councils, to enable it to prepare Draft Proposals in the Review.

4. Implications of the Recommendations

4.1. Legal Implications

4.1.1. The legal implications are contained in the main body of this report.

4.2. Finance Implications

4.2.1. It has been agreed that some degree of external advice will be required as part of the review process. The cost of this is not yet known but is not expected to be major. Consultation has taken place with the Head of Procurement to ensure that the correct process is followed.

4.3. Policy Implications

4.3.1. This report constitutes the terms of reference of the community governance review.

4.4. Equality Implications

4.4.1. There are no equality implications arising from this report.

4.5. Human Resources Implications

4.5.1. The review will be carried out using existing staffing resources, although it will be necessary to procure some external advice (see paragraph 4.2.1 above).

4.6. Risk Management Implications

4.6.1. Clear terms of reference will reduce the risk of lack of clarity for the review. The holistic approach envisaged will avoid the risk of adopting an inconsistent and piecemeal approach to the review in different parts of the Borough.

4.7. Rural Communities Implications

4.7.1. There are direct implications for all rural communities which will become evident as the review progresses.

4.8. Implications for Children & Young People

4.8.1. Any such implications will become evident as the review progresses.

4.9. Public Health Implications

4.9.1. Any such implications will become evident as the review progresses.

5. Ward Members Affected

5.1. All wards

6. Consultation & Engagement

6.1. This is dealt with in the main body of the report.

7. Access to Information

7.1. There are no additional supporting documents.

8. Contact Information

8.1. Any questions relating to this report should be directed to the following officer:

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