

Cabinet Member for Environmental Services

Agenda

Date: Monday 16th April 2012
Time: 9.30 am
Venue: Committee Suite 1 & 2, Westfields, Middlewich Road, Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

To receive any apologies for absence

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the meeting. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

For any apologies or requests for further information, or to give notice of a question to be asked by a member of the public

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4. **Street Naming and Numbering Legislation: Intention to Adopt** (Pages 1 - 8)

To consider a report on the various legislative provisions in respect of street naming and numbering and, in respect of street naming, identify which legislation is proposed to be adopted once the necessary statutory notice has been given

THERE ARE NO PART TWO ITEMS

CHESHIRE EAST COUNCIL

Cabinet Member for Environmental Services

Date of Meeting: 16th April 2012
Report of: Strategic Director , Places and Organisational Capacity
Subject/Title: Street Naming and Numbering Legislation:
Intention to Adopt

1.0 Report Summary

- 1.1 The report provides details of the various legislative provisions in respect of street naming and numbering and, in respect of street naming, requests that the Cabinet Member identifies which legislation is proposed to be adopted once the necessary statutory notice has been given.

2.0 Decision Requested

- 2.1 The Cabinet Member for Environmental Services is requested:
- 2.1.1 to note the legislative position outlined in Appendix A in respect of the numbering of properties;
- 2.1.2 to express the intention to pass a resolution to adopt the following legislation relating to street naming:
- (i) section 17 of the Public Health Act 1925;
 - (ii) section 21 of the Public Health Acts Amendment Act 1907; and
 - (iii) section 19 of the Public Health Act 1925
- 2.1.3 to authorise the giving of notice as required by paragraph 25 of Schedule 14 to the Local Government Act 1972 of the Council's intention to pass a resolution to adopt the legislation referred to at 2.1.2 above.

3.0 Reasons for Recommendations

- 3.1 In relation to street naming, it is necessary to take steps to formalise the position in respect of the legislation under which the Borough Council undertakes its street naming function.
- 3.2 Prior to passing any resolution to adopt such legislation, it is necessary to give notice of the intention to adopt as per the requirements within paragraph 25 of Schedule 14 to the Local Government Act 1972, as discussed in detail below.

4.0 Wards Affected

- 4.1 All Wards.

5.0 Local Ward Members

- 5.1 All Members

**6.0 Policy Implications including – Carbon Reduction
- Health**

- 6.1 Subject to the adoption of the legislative provisions, the Cabinet Member will be asked to consider the approval of a policy in relation to the street naming and numbering function at a subsequent meeting.

7.0 Financial Implications (Authorised by the Borough Treasurer)

- 7.1 Under s.93 Local Government Act 2003, a best value authority may charge a person for providing a service if the authority is authorised, but not required, to provide the service – that is the service must be discretionary. There must be a power to provide the service, the person receiving the service must agree to its provision, and the charge must not exceed the cost of providing the service.
- 7.2 Thus, the Council would be able to charge under certain provisions, such as the numbering of houses under section 11 of the Cheshire County Council Act 1980 (which is a discretionary service) but not others such as certain street naming services (since the duty to provide this service is not discretionary). Full details of the provisions which are discretionary, and therefore enable the Council to charge if desired, are contained within Appendix A. Information is provided in respect of charging to facilitate a decision regarding the proposed adoption of the legislation.
- 7.3 There will be a cost associated with the publication of the requisite statutory notice. These costs, which are estimated to be in the region of £2,500, will be met within existing budgets within the ICT (Information Management) Service.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Legal Implications are contained within the body of the Report and Appendices.

9.0 Risk Management

- 9.1 In respect of street naming, should the Council not formally adopt the legislation, the mixture of the various provisions in operation in the former boroughs will remain. This may lead to inconsistency in application across Cheshire East.

10.0 Background and Options

- 10.1 The Council has the legal responsibility to ensure that streets are named and properties numbered. Prior to local government reorganisation this function was carried out by the former councils under different legislation, some of which has been difficult to identify; as a result, it is necessary for the Cheshire

East Borough Council to formalise its view as to which legislation it wishes to apply. The legislative position is complex, involving different Acts of Parliament, including local legislation in the form of the Cheshire County Council Act 1980. A detailed breakdown of the legislation is contained with Appendix A including, where relevant, the different options available to the Council.

- 10.2 As is set out within Appendix A, some provisions within the legislation are applied automatically, (some of which were repealed by the Cheshire County Council Act 1980) and others require a decision as to which legislation is to be adopted. All of which, taken together, should provide a suite of legislation enabling the Borough Council to perform its street naming, numbering and signing functions.
- 10.3 As a part of the adoption process, the Council is required to provide public notice of its intention to pass the resolution in a local newspaper for two consecutive weeks. It must also serve such notice, no later than the date on which the notice is first published in the newspaper, on every parish council or community council affected. Where there is no parish council, it must be served on the chairman of the parish meeting.

11.0 Access to Information

- 11.1 Sections 17-19 of the Public Health Act 1925
- 11.2 Section 21 of the Public Health Acts Amendment Act 1907
- 11.3 Sections 64 & 65 of the Town Improvement Clauses Act 1847
- 11.4 Section 11 of the Cheshire County Council Act 1980

The background papers relating to this report can be inspected by contacting the report writer(s):

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Legislation

Legislation

- 1.1 The relevant legislation for street naming and numbering is contained within various provisions under;
- 1.1.1 the Town Improvement Clauses Act 1847;
 - 1.1.2 the Public Health Acts 1875 to 1925;
 - 1.1.3 the Public Health Act Amendment Act 1907; and
 - 1.1.4 the Cheshire County Council Act 1980
- all of which are summarised in paragraphs 1.3 and 1.4 below. The full extracts are available as background papers.

Numbering of properties

- 1.2 By virtue of paragraph 23 of Schedule 14 to the Local Government Act 1972, all of the provisions of the Public Health Acts 1875-1925 apply throughout England and Wales, subject to specified exceptions. As a result, the legislation in respect of numbering of houses was automatically applied throughout England and Wales. Locally, these provisions were further amended by the Cheshire County Council Act 1980 which came into force on 1st July 1980 and it continues to apply following local government reorganisation by virtue of Regulation 3 of The Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 (SI 2008/2867). The effect of the Cheshire County Council Act 1980 is that property numbering is dealt with under that local Act rather than the Town Improvement Clause Act 1847.
- 1.3 Section 11 of the Cheshire County Council Act 1980 provides for the allocation by the Council to buildings in the street of such numbers as they think fit and allows the service of a notice requiring the owner/occupier to mark the number in a manner which is legible from the street. The owner/occupier is required to maintain the mark so that it remains legible from the street and to keep the view of the mark unobstructed. The Council can also alter numbers under this Section and the same requirements on the owner/occupier will apply. The Council may require a building to be marked with some identification other than a number. Again, the same requirements as to maintenance and unobstructed view on the owner/occupier will apply. Any owner/occupier who fails to comply with a notice served or contravenes these requirements is guilty of an offence, liable on conviction in the Magistrates' courts to a £50 fine. As detailed above, any provisions of sections 64 and 65 of the Town Improvement Clause Act 1847, insofar as they relate to numbering, cease to apply in the (former) county area. As a discretionary power, the Council would be able to charge for the numbering and renumbering service if desired.

Street naming/altering existing names

- 1.4 A summary of the relevant legislation for street naming/altering of street names is as follows;

1.4.1 Section 64 of the Town Improvement Clauses Act 1847 (incorporated into Section 160 of the Public Health Act 1875) allows councils to name new streets, mark the street name (street nameplate provision) and control interference with such markings (under the legislation interference is a criminal offence name - maximum £250 penalty on conviction).

1.4.2 Section 21 of the Public Health Acts Amendment Act 1907 provides for the alteration of a street name with the consent of two-thirds of the ratepayers/council tax payers living in the street. It also gives power to mark the altered street name and there are offences for any person who obliterates, defaces, obscures, removes, or alters any such name [maximum £250 penalty on conviction].

1.4.3 Sections 17-19 Public Health Act 1925 provides as follows:-

(i) s17 – allows a notice proposing a street name to be served on a council. Where the council object, it is unlawful for the street sign to be erected until the objection is either withdrawn by the council or overruled on appeal to the Magistrates' court. Any person acting in contravention is liable to a maximum penalty of £250 on conviction.

(ii) s18 – allows a council to alter a street name or assign a name to any street for which a name has not been given. One month before doing so, the council must erect notices in the street informing the public of the council's intention and advising of route of appeal to Magistrates' courts within 21 days of notice being displayed.

(iii) s19 – requires a council to mark (and renew/alter) the name of every street in a conspicuous position. It also provides for the prosecution of any person who pulls down such an inscription or erects a different name or places any advertisement within 12 inches of a street nameplate. [maximum £250 penalty on conviction].

- 1.5 In accordance with Schedule 14 of the Local Government Act 1972, it is not possible for the Council to use all of the above legislation and in certain cases, a resolution to adopt one provision automatically has the effect of disapplying an alternative provision. The alternatives available in accordance with the 1972 Act are as follows:

1.5.1 Section 21 Public Health Acts Amendment Act 1907 **or** Section 18 Public Health Act 1925.

1.5.2 Sections 64 & 65 Town Improvement Clauses Act 1847 **or** Section 19 Public Health Act 1925.

- 1.6 Insofar as the naming of new streets is concerned, Section 17 of the Public Health Act 1925 can be adopted individually, without conflict with any other legislation. Thus, it is recommended that the Council adopts this Section in addition to the choices to be made as described below.

The options – 2 separate choices to be made

- 1.7 Choice 1 – concerning the ability to alter street names

1.7.1 Section 21 Public Health Acts Amendment Act 1907.

Under this Section the procedure for altering street names requires the consent of two thirds of the ratepayers affected. Thereafter, the Council has the power to erect street nameplates and there are offences for any person who obliterates, defaces, obscures, removes, or alters any such name.

or

1.7.2 Section 18 Public Health Act 1925.

Under this Section the Council may alter the name of a street by order, provided one month prior to making the order notice of the intended change is given. Aggrieved persons have 21 days to appeal to the Magistrates' court against the order. Under this Section there are no formal consultation requirements.

Analysis of the differences between these Sections

The main difference is that when altering a street name, Section 21 Public Health Acts Amendment Act 1907 requires the consent of two thirds of the affected ratepayers, whereas under Section 18 Public Health Act 1925 the Council can alter the name by order, (subject to a route of appeal to Magistrates' court). Thus, there is much less flexibility under Section 21 Public Health Acts Amendment Act 1907. A further difference, however, is that Section 21 contains penalties for interference with the street name, whereas Section 18 does not. Thus, if Members wish to adopt Section 18 and defacing of name plates is of concern, it will be necessary to specifically consider which of the options in Choice 2 below offers the widest criminal offences for prosecution.

Charging

Both Section 21 Health Acts Amendment Act 1907 and Section 18 Public Health Act 1925 are discretionary services and therefore the Council may charge for amending a street name under either provision.

- 1.8 Choice 2 – concerning the erection of name plates and penalties for damage or using unapproved street names

1.8.1 Section 64 Town Improvement Clauses Act 1847 (Section 65 is not relevant in this case, having ceased its application in the former county area by virtue of s11 of the Cheshire County Council Act 1980). Enables new streets to be named and there are penalties for any

person who destroys, pulls down or defaces the street name. It also has a penalty for any person erecting a different name.

or

1.8.2 Section 19 Public Health Act 1925

This Section requires the council to mark the names of streets, with a power to renew or alter as the case may be. There are penalties if any person pulls down the name plate, sets up a different name or erects any notice or advertisement within 12" of the name.

Analysis of the differences between these Sections

The main difference is that Section 64 Town Improvement Clauses Act 1847 carries the wider list of criminal offences as it enables prosecutions for destruction and defacing a street name, whereas Section 19 Public Health Act 1925 only has a penalty for pulling down the name plate or where any notice or advertisement is placed within 12 inches of a name plate. Section 19, however, does carry a specific power to renew/alter the name plate, which Section 64 Town Improvement Clauses Act 1847 does not have. The level of the penalty upon conviction is the same regardless of the legislation chosen. Thus, it would seem that if damage or defacing is a concern in the Borough it would be more appropriate to adopt Section 64 Town Improvement Clauses Act 1847. If notices or advertisements being attached to or near to street name plates is of greater concern in the Borough, then it would be more appropriate to adopt Section 19 Public Health Act 1925.

Charging

Both Section 64 Town Improvement Clauses Act 1847 and Section 19 Public Health Act 1925 are powers which the council are mandated to provide or have a duty to provide and therefore the Council would not be able to charge for the erection of name plates under either of these provisions.

Recommendations

- 1.9 Officers recommend that in respect of the options, the following legislation is chosen:

1.9.1 Choice 1 – concerning the ability to alter street names
Section 21 Public Health Acts Amendment Act 1907

1.9.2 Choice 2 – concerning the erection of street signs and penalties for damage or using unapproved street names
Section 19 of the Public Health Act 1925