



## Chester-le-Street District Council

<b>REPORT TO:</b>	<b>EXECUTIVE</b>
<b>DATE OF MEETING:</b>	<b>12 May 2008</b>
<b>REPORT OF:</b>	<b>Head of Legal &amp; Democratic Services</b>
<b>SUBJECT:</b>	<b>New powers to establish parish councils People and Place – Potential for a Town Council for Chester-le-Street</b>
<b>ITEM NUMBER:</b>	

### 1 Purpose and Summary

- 1.1 The purpose of this report is firstly to raise awareness about the new powers of the Council to establish parish councils under Part 4 of the Local Government and Public Involvement in Health Act 2007 ('the Act') which was enacted on 30 October 2007 and secondly to consider whether or not to recommend that a 'community governance review' should be voluntarily undertaken by the Council at this time.
- 1.2 Districts councils, unitary county councils and London borough councils (principal councils) have since 13 February 2008 power to undertake 'community governance reviews' and to make decisions as to whether to implement recommendations. The Secretary of State therefore no longer makes such decisions. The Council has indicated that it will give consideration to a town council for Chester-le-Street. This is a proposal within the council's '**People and Place**' priority currently under development. Under new legislation progress can only be made following a 'community governance review'. It appears that the council cannot progress proposals for a town council unless it has conducted a 'community governance review'. Such a review could be undertaken on a specific community or neighbourhood area or on the full administrative boundary of the council. The council could be required to undertake a 'community governance review' in specific circumstances.
- 1.3 There is an expectation in the statutory guidance entitled 'Guidance on community governance reviews' ('the Guidance') that any such 'community governance review' should take no longer than 12 months to complete.
- 1.4 Para. 23 of the Guidance makes clear the intended outcome which is '...to bring about improved community engagement, better local democracy and result in more effective and convenient delivery of local services.'

1.5 There has been interest expressed by communities in establishing parish councils in communities not served by an existing one as well as a town council for Chester-le-Street. As the Council has decided to give consideration to the potential for a Town Council it is felt that a 'do nothing' option would be an inappropriate course of action at this stage. In order to address the **'People and Place'** priority proposal it is felt that members ought to be minded to undertake a review with a limited scope for the potential for a new Town Council. This ought to be done in partnership with the County Council. The implications in terms of human and financial resources remain unknown and what ever approach members adopt it is suggested that a further report ought to be brought back to the Executive with a view to making a further, more informed decision on implications and the detail of how the issue can be progressed.

1.6 Members are recommended to:

1. note the new powers
2. decide whether or not to recommend that the Council voluntarily undertakes a 'community governance review' and, if so, determine its scope with a view to a further report being brought back to the Executive to determine how progress can be made.

## **2. Consultation**

2.1 This report is being placed before Members of the Executive in order to begin the consultative process on whether or not to voluntarily undertake a 'community governance review' under the Council's duty to periodically consider such matters. Early consultation with Durham County Council would need to take place.

2.2 Should a decision be taken on a 'community governance review', the Council is required under section 79 of the Act to notify Durham County Council of their intention to undertake a review and of its terms of reference. Furthermore, section 93 of the Act requires the Council to consult with interested stakeholders such as with local people and organisations and including other local authorities which have an interest in the review.

2.3 Letters have been received from North End Residents Association and Chester-le-Street Residents Association requesting that the council forms a local Town Council. Other communities have raised the issues of parishes not currently served by parish councils in the district.

## **3. Transition Plan and People and Place Priority**

3.1 The Transition Plan sets out the Council's new single **People and Place** priority. It has already been agreed, and supported by the Executive and Scrutiny Panels, that the current priorities will be retained for the purposes of this year's plan. The Plan however, makes it clear that during the year

the Council will re-address its priorities and decide upon new ones in order to develop next year's budget. This is in the light of change in the district and within the organisation.

3.2 The plan significantly takes into account the recently publicised Comprehensive Performance Assessment result.

3.3 The need to consider whether to voluntarily conduct a 'community governance review' has a direct impact on the following areas of the **People and Place** priority:

- Partnerships for Futures
- Investment in the Town Centre
- Strengthening partnerships and
- Neighbourhoods

3.4 A specific strand of the Strengthening Partnerships part of the '**People and Place**' priority is to consider the potential for a Town Council in Chester-le-Street. This has been considered as an earlier item on the agenda of this Executive.

3.5 Para. 45 of the Guidance states: 'Communities and Local Government is working to help people and local agencies create cohesive, attractive and economically vibrant local communities, building on the Government's Sustainable Communities strategy.' It continues at para. 46 to note that 'an important aspect to approaching sustainable communities is allowing local people a say in the way their neighbourhoods are managed...' Para. 56 observes that "'Place' matters in considering community governance and is a factor in deciding whether or not to set up a parish.'

#### **4. Implications**

##### **4.1 Financial and Value for Money Statement**

4.1.1 The cost of a community governance review is a variable as it depends upon the scope of the review and its terms of reference e.g. would it be focused on a specific community or neighbourhood or on the whole administrative area of the District Council. The cost of implementation is likewise a variable as it depends upon how ambitious the proposals are (e.g. how large the offices, how many staff, what services etc). A new parish council will not be able to function without its set up costs being made available prior to its first precept being agreed, levied and collected. Costs will include consultation costs and costs of publication. It is therefore impossible to accurately quantify the costs before formulation has taken place of any particular proposals. The set up costs may therefore be considerable and there will be a need to discuss the resource implications with Durham County Council.

4.1.2 Whether or not any recommendation represents value for money will be dependent upon what that recommendation comprises.

## 4.2 Local Government Reorganisation Implications

4.2.1 The focus for the Council up to 31 March 2009 is of relevance to the new organisation. The County Council must by law be notified of and consulted on any community governance review. This is particularly important due to Local Government Reorganisation and the successful bid of Durham County Council. The County Council's bid suggests that the new unitary authority may be responsible for the creation of a new Town Council for Chester-le-Street. Paragraph 5.58 of the bid suggests:

'Town and Parish Councils are a key part of the infrastructure in many neighbourhoods. Working with the County Durham Association of Local Councils and local community interests, the new unitary council would use its power to establish town and parish council's in line with the association's policy objective of full parishing of the County. This could involve the creation of new town councils in places such as Consett, central Chester-le-Street and Durham City centre, capable of providing very local place-shaping and potentially acting as the cornerstones of co-operation for wider clusters of town and parish councils.'

In the absence of a mechanism for the set up costs incurred before establishment of any new Town Council to be recovered, then the resource implications will need to be discussed with Durham County Council.

## 4.3 Legal

4.3.1 Part 4 of the Local Government and Public Involvement in Health Act 2007 deals with 'Parishes'. There are two ways in which a 'community governance review' may be triggered, namely by either a 'community governance petition' by the requisite number of local electors or by the Council.

4.3.2 The Council is required under section 100(4) of the Act to 'have regard to' the statutory guidance issued by the Secretary of State. In other words, there must be good reason to depart from it. The Guidance itself at para.5 makes clear that 'This guidance is not an authoritative interpretation of the law (as that is ultimately a matter for the courts)...'

## 4.4 Personnel

There are specific personnel issues as a result of this report. Staff resources would need to be identified and there will be a human and financial resource issue to consider.

## 4.5 Other Services

The undertaking of a community governance review clearly relates to all Services within the Council and has implications for improvement in Service Delivery.

#### 4.6 Diversity

It is not considered that a Diversity Impact Assessment is required as part of the production of this report. Such assessments will be considered as part of any individual proposal.

#### 4.7 Risk

4.7.1 Para. 26 of the Guidance says that '[p]rincipal councils will want to keep their community governance arrangements under review, and they should ensure that they consider on a regular basis whether a review is needed...'

4.7.2 To regularly decide whether a review is needed or not helps reduce the risk of community governance arrangements ceasing to keep up with the needs and aspirations of local communities.

4.7.3 The Council is currently at risk of having no option but to carry out a community governance review if it receives a valid community governance petition for the whole or part of the council's area. Para. 41 of the Guidance makes clear that a petition must satisfy certain conditions. Firstly, it must be signed by the requisite number of local electors as determined against three statutory thresholds.

<u>Area with 499 or less local electors</u>	At least 50% of that electorate
<u>Area of between 500 and 2,500 local electors</u>	At least 250 of that electorate
<u>Area of more than 2,500 local electors</u>	At least 10% of that electorate

Secondly, the petition must specify 'the area to which the review relates, whether on a map or otherwise, and refer to identifiable fixed boundaries.' (para. 43 of the Guidance). Thirdly, the petition 'must specify one or more proposed recommendations for review'. (para. 43 of the Guidance). 'These recommendations can be about a variety of matters including:

- the creation of a parish;
- the name of a parish;
- the establishment of a separate parish council for an existing parish;
- the alteration of boundaries of existing parishes;
- the abolition of a parish;
- the dissolution of a parish council;
- changes to the electoral arrangements of a parish council; and
- whether a parish should be grouped under a common parish council or de-grouped'.

- 4.7.4 There are two exceptions to this duty to conduct a community governance review upon receipt of a valid petition but these do not presently apply to the District Council.

Para.24 of the Guidance makes clear that ‘...the duty to conduct a review does not apply if:

- a) the principal council has concluded a community governance review within the last two years which in its opinion covered the whole or a significant part of the area of the petition; or
- b) the council is currently conducting a review of the whole, or a significant part of the area to which the petition relates.’

#### 4.8 Crime and Disorder

It is not felt there are any specific implications of the report on Crime and Disorder.

#### 4.9 Data Quality

Every care has been taken in the development of this report to ensure that the information and data used in its preparation are accurate, valid, reliable, timely, relevant and complete. The Council’s Data Quality Policy has been complied with in producing this report.

#### 4.10 Other Implications

All other corporate implications have been taken into account. It is considered that the decision whether or not to voluntarily undertake a community governance review at this time is a matter of policy and ought to be agreed at Full Council. This report does not therefore refer to a key decision.

### **5. Background, Position Statement and Options Appraisal**

#### **Background**

- 5.1 The Local Government White Paper entitled ‘Strong and prosperous communities’ published in October 2006 recommended greater local devolution i.e. ‘that local communities should be able to take more responsibilities for local issues affecting their area. Key to this approach is community empowerment, and the ability of various existing organisations themselves to see through specific projects to tackle local issues...’ (para.137 of the Guidance). Part 4 of the Local Government and Public Involvement in Health Act 2007 enables this.
- 5.2 The driving force behind the new powers is ‘help people and local agencies create cohesive, attractive and economically vibrant local communities. The aim for communities across the country is for them to be capable of fulfilling their own potential and overcoming their own difficulties, including

community conflict, extremism, deprivation and disadvantage. Communities need to be empowered to respond to challenging economic, social, and cultural trends, and to demographic change.’ (para. 54 of the Guidance).

5.3 At the present time there are eleven parish councils in the District of Chester-le-Street, namely Bournmoor Parish Council, Edmondsley Parish Council, Great Lumley Parish Council, Kimblesworth and Plawsworth Parish Council, Little Lumley Parish Council, North Lodge Parish Council, Ouston Parish Council, Pelton Parish Council, Sacriston Parish Council, Waldrige Parish Council and Urpeth Parish Council. The rest of the area is unparished.

5.4 The options are:

(1) not to undertake a voluntary community governance review at the present time or,

(2) to undertake a community governance review before being made to do so by the receipt of a valid community governance petition. If this option is considered the most appropriate then the following must be considered:

- should the scope of the review be based on an area specific to the potential Town Council for Chester-le-Street;
- should the scope of the review be far wider and look either to other communities where issues have been raised or the whole administrative boundary.

To decide on the most appropriate course of action it is necessary to understand what a community governance review (formerly a parish review) entails.

### **The Legislation and Guidance**

5.5 A community governance review involves looking at the forms of corporate governance. This is no “one size fits all” vehicle. Para.33 of the Guidance states that ‘[w]hen undertaking the review they must have regard to the need to secure that community governance **reflects the identities and interests of the community** in the area under review, and the need to secure that community governance in that area is **effective and convenient**.’ Para. 35 of the Guidance states ‘[p]rincipal councils must consider the wider picture of community governance in carrying out their reviews...’

5.6 *Non-parish forms of community governance*

5.6.1 Para. 135 of the Guidance states: ‘In conducting a community governance review, principal councils must consider other forms of community governance as alternatives or stages towards establishing parish councils...’ There are ‘other types of viable community representation which may be more appropriate to some areas than parish councils, or may

provide stages building towards the creation of a parish council. There is sometimes evidence locally of an existing community governance infrastructure and of good practice which are successfully creating opportunities for engagement, empowerment and co-ordination in local communities.'

5.6.2 Examples of non-parish forms of community governance include area committees of principal councils, neighbourhood management programmes, tenant management organisations, area or community forums, residents' and tenants' associations and community associations.

5.6.3 Section 93(5) of the Act states that 'In deciding what recommendations to make [in the community governance review] the principal council must take into account any other arrangements...that have already been made or that could be made for the purposes of community representation or community engagement in respect of the area under review.'

## 5.7 *Parish form of community governance*

5.7.1 Parish councils have the advantage of democratic accountability. Para. 136 of the Guidance notes that 'what sets parish councils apart from other kinds of governance is the fact they are a democratically elected tier of local government, independent of other council tiers and budgets, and possess specific powers. This is an important distinction to make. Parish councils are the foundation stones for other levels of local government in England. Their directly elected parish councillors represent local communities in a way that other bodies, however worthy cannot since such organisations do not have representatives directly elected to those bodies.'

5.7.2 The Act helps to highlight the importance of parish councils. Para.122 of the Guidance notes: 'The Local Government White Paper underlined the Government's commitment to parish councils as an established and valued form of neighbourhood democracy with an important role to play in both rural, and increasingly urban, areas. Para. 49 of the Guidance states: 'Parish councils continue to have two main roles: community representation and local administration. For both purposes it is desirable that a parish should reflect a distinctive and recognizable community of place, with its own sense of identity. The views of local communities and inhabitants are of central importance.'

### 5.7.3 What can be the Style of a parish council?

Legislative provision refers to parish councils. However, parish councils can adopt alternative styles so that whilst legally they are still parish councils in substance a different style can be chosen. Before the Act the choice of "town" status was merely available as an alternative style. Since the Act there is on offer a further choice of alternative styles for a parish: community, neighbourhood and village. The important point to note is, as para. 106 of the Guidance, makes clear '...for as long as the parish has an



alternative style, it will not also be able to have the status of a town and vice versa.’ The decision as to be alternative style depends upon whether the review relates to a new parish or existing parishes. It is for existing parishes to decide whether to have one of the alternative styles with the review making recommendations as to whether the geographical name of the parish should be changed. It is for the principal council, ‘in the first instance, to make recommendations as to the geographical name of the new parish, and as to whether or not it should have one of the alternative styles.’ (see para.110 of the Guidance).

5.7.4 Should there be grouping or degrouping of parishes? A community governance review can recommend the grouping or degrouping of parishes by principal councils. As para. 112 of the Guidance observes ‘...unless they already exist as functioning parish councils smaller new parishes of less than 150 electors will be unable to establish their own parish council under the Act.’ ‘Grouping or degrouping needs to be compatible with the retention of community interests. It would be inappropriate for it to be used to build artificially large units under single parish councils’ (para.113 of the Guidance).

5.7.5 Should parishes be abolished and dissolved? Para.116 of the Guidance states: ‘While the Government expects to see a trend in the creation, rather than the abolition, of parishes, there are circumstances where the principal council may conclude that the provision of effective and convenient local government and/or the reflection of community identity and interests may be best met, for example, by the abolition of a number of small parishes and the creation of a larger parish covering the same area...’. But it is further noted at para. 117 of the Guidance that ‘...The area of abolished parishes does not have to be redistributed to other parishes, an area can become unparished. However, it is the Government’s view that it would be undesirable to see existing parishes abolished with the area becoming unparished with no community governance arrangements in place.’

5.8 How does one assess whether to voluntarily undertake a review? The Council has the discretion under the Act to undertake a community governance review at any time it wishes and to assess whether to do so para. 28 of the Guidance states ‘[p]rincipal councils should use their knowledge and awareness of local issues when deciding whether to undertake a review...’

5.9 Para. 26 of the Guidance suggests that ‘it would be good practice for a principal council to consider conducting a review every 10 -15 years – except in the case of areas with very low populations when less frequent reviews may be appropriate.’

5.10 Examples of when a review should be avoided are given in the Guidance. Para. 28 states ‘...principal councils should avoid starting a community governance review if a review of a district, London borough or county council electoral arrangements is being, or is about to be, undertaken.

Ideally, community governance reviews should be undertaken well in advance of such electoral reviews, so that the Boundary Committee for England in its review of local authority electoral arrangements, and the Electoral Commission, can take into account any parish boundary changes that are made. The Electoral Commission can provide advice on its programme of electoral reviews.'

- 5.11 The timetable of any community governance review must allow a reasonable time for the formulation of terms of reference, consultation of interested stakeholders, for consideration of the evidence following that consultation, for the decision to be made and (if it is for a community governance order to be made) for implementation (including publication) (see para.38).
- 5.12 What should the terms of reference be? If the Council is to voluntarily undertake a community governance review, it must decide the terms of reference and these must be published. If any modifications are made to the terms of reference, these must also be published. As para. 21 of the Guidance states '...the Government expects terms of reference to set out clearly the matters on which a community governance review is to focus. The local knowledge and experience of communities in their area which principal councils possess will help to frame suitable terms of reference. The terms should be appropriate to local people and their circumstances and reflect the specific needs of their communities.' One obvious constituent of the terms of reference is the area under the review. Para. 23 of the Guidance states 'Local people may have already expressed their views about what form of community governance they would like for their area, and principal councils should tailor their terms of reference to reflect those views on a range of local issues...'
- 5.13 What consultation? Section 79 of the Act requires the Council to notify the County Council of any intention to undertake a review and of the terms of reference. Following notification, section 93 of the Act requires consultation with the County Council and other local authorities which have an interest in the review. Para. 33 of the Guidance states '...principal councils will need to consult local people and take account of any representations received in connection with the review...' It will need to consult with other local bodies or organizations such as local businesses, local public and voluntary organizations including local residents' associations. In undertaking a review section 93(5) requires the Council to take these bodies into account.
- 5.14 What are the criteria for undertaking a community governance review? The statutory criteria in section 93 of the Act are set out in para. 51 of the Guidance. The community governance review within the chosen area under review must ensure that the community governance will be 'reflective of the identities and interests of the community in that area and is effective and convenient.' The Council when considering the statutory criteria must 'take into account a number of influential factors, including the impact of community governance arrangements on community cohesion and the size, population and boundaries of a local community or parish.' (see para.52 of the Guidance).

5.15 What recommendations and decisions on the outcome of community governance reviews? The Council must make recommendations as to:

- '(a) whether a new parish or any new parish should be constituted;
- (b) whether existing parishes should or should not be abolished or whether the area of existing parishes should be altered; or
- (c) what the electoral arrangements for new or existing parishes, which are to have parish councils, should be' (see para. 91 of the Guidance).

The Council may also make recommendations 'about:

- (a) the grouping or degrouping of parishes;
- (b) adding parishes to an existing group of parishes; or
- (c) making related alterations to the boundaries of a principal council's electoral areas.' (see para.92 of the Guidance).

In deciding what recommendations to make the Council must have regard to the section 93 criteria (see above at para.5.14 to this report) and must also take account any other arrangements (apart from those relating to parishes and their institutions) that have already been made, or that could be made, for the purposes of community representation or community engagement. (see para.93 of the Guidance).The Council must also take into account any representations received. The recommendations should be supported by evidence which demonstrates that the recommended community governance arrangements would meet the statutory criteria. The Council must publish its recommendations. In making its decision as to whether or not to give effect to its recommendations, the Council must have regard to the statutory criteria (see para.51 of the Guidance). The Council must publish its decision and the reasons for its decision.

5.16 What about implementation? Implementation is by way of a 'community governance order'. The Guidance states that any 'community governance order' should take effect from 1 April following the date it is made. If therefore the community governance review results in a 'community governance order', the commencement of a community governance review needs to take into account that the Guidance at para. 30 states: 'Reorganisation of community governance orders....creating new parishes, abolishing parishes or altering their area can be made at any time following a review. However for administrative and financial purposes (such as setting up the parish council and arranging its first precept), the order should take effect on 1 April following the date on which it is made'. The Local Government Finance (New Parishes) Regulations 2008 No. 626 deals with the setting of precepts for new parishes. The Guidance continues 'Electoral arrangements for a new or existing parish council will come into force at the first elections to the parish council following the reorganisation order. However, orders should be made sufficiently far in advance to allow preparations for the conduct of those elections to be made. In relation to a new parish council, the principal council may wish to consider whether, during the period between 1 April and the first elections to the parish council, it should make interim arrangements for the

parish to be represented by councillors who sit on the principal council.’  
Para. 31 of the Guidance states ‘...where a new parish council is to be created, if the next election to the ward or division are not scheduled to take place for some time, the principal council is able to modify or exclude the application of sections 16(3) and 90 of the Local Government Act 1972 to provide for the first election to the parish council to be held in an earlier year, with councilors serving a shortened first term to allow the parish council’s electoral cycle to return to that of the unitary, district or London borough ward.’

- 5.15 Para. 37 of the Guidance states that the process of a community governance review should be completed within 12 months (calculated from the date of receipt of a valid community governance petition or from the date of the start of the community governance review). ‘Principal councils are required to complete the review, including consequential recommendations to the Electoral Commission for related alterations to the boundaries of principal area wards and/or divisions, within 12 months of the start of the community governance review (or on receipt of a valid community governance petition...)’

### **The Options**

- 5.16 The potential options were set out in paragraph 5.4. As the council has decided to give consideration to the potential for Town Council it is felt that the ‘do nothing’ option would be an inappropriate course of action at this stage. At this point in time it is felt that Members ought to be minded to undertake a ‘community governance review’ although the scope is at issue. Anything other than a focus on the area affected by a new Town Council for Central Chester-le-Street could have significant resource issues for the council and may not be achievable within the lifetime of the council without significant redirection of resources and impact on service delivery elsewhere. This should only be done in conjunction with the County Council in view of the impact of Local Government Re-organisation, the need for up front resources to be made available and the sustainability of any proposals arising out of the review.
- 5.17 In order to address the **‘People and Place’** priority proposal it is felt that members ought to be minded to consider undertaking a review with a limited scope for the potential for a new Town Council. As it is felt that this ought to be done in partnership with the County Council the implications in terms of human and financial resources remain unknown. Whatever approach members adopt it is suggested that a further report ought to be brought back to the Executive with a view to making a further, more informed decision on implications and the detail of how the issue can be progressed.

6. **Recommendations**

6.1 It is recommended that:-

1. the new powers to establish parish councils are noted
2. decide whether or not to recommend that the Council voluntarily undertakes a 'community governance review' and, if so, determine its scope with a view to a further report being brought back to Executive to determine how progress can be made.

7. **Background Papers/ Documents Referred to**

- 7.1 Guidance on community governance reviews issued by the DCLG
- 7.2 Council Transition Plan March 2008
- 7.3 Report to Executive 12<sup>th</sup> March 2008 Implementation of the Transition Plan

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**29 April 2008**

**Version 3.0**

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## **APPENDIX**

### **STEPS TO BE NORMALLY TAKEN WITHIN 12 MONTHS**

**START OF COMMUNITY GOVERNANCE REVIEW (by either a community governance petition or by voluntary decision by the Council)**

**DECIDE TERMS OF REFERENCE**

**UNDERTAKE CONSULTATION**

**MAKE RECOMMENDATIONS**

**MAKE DECISION**

**IF CHANGED ARRANGEMENTS, MAKE COMMUNITY GOVERNANCE ORDER**

**IMPLEMENTATION**

**NB. ELECTORAL ARRANGEMENTS**