

Cabinet

14 June 2023



Barningham Parish Meeting:

Application for Order Conferring Functions of a Parish Council

Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

Councillor Richard Bell, Deputy Leader and Portfolio Holder for Finance

Electoral division(s) affected:

Barningham Parish in the Electoral division of Barnard Castle East.

Purpose of the Report

- 1 This report considers an application which has been made by Barningham Parish Meeting for an order conferring upon it functions of a parish council.

Executive summary

- 2 Barningham Parish Meeting has applied to Durham County Council for an order conferring upon it the powers of expenditure available to a parish council.
- 3 [Section 109 of the Local Government Act 1972](#) provides that, on the application of the parish meeting of a parish not having a separate parish council, the district (or in this case unitary) council may by order confer on the parish meeting any functions of a parish council.
- 4 The report sets out the implications for Cabinet to consider when determining such an application.

Recommendation(s)

- 5 It is recommended that Cabinet:
 - (1) By Order under section 109 of the Local Government Act 1972 confer upon Barningham Parish Meeting those of the powers available to a parish council to incur expenditure set out in the draft Order appended to this report;

- (2) Delegate authority to the Head of Legal and Democratic Services to execute the said Order and send copies to the Secretary of State, subject to Barningham Parish Meeting agreeing to discharge the cost of any additional insurance premium associated with the indemnity mentioned at (3) below; and
- (3) That an indemnity be provided to the Proper Officer of Durham County Council for the purposes of undertaking the duties of a Parish Trustee under Section 13 of the Local Government Act 1972.

Background

- 6 Durham County Council has received an application made on behalf of Barningham Parish Meeting for an Order under s.109(1) of the Local Government Act 1972 conferring upon it all of the powers of expenditure available to parish councils. A copy of the application appears at **Appendix 2** to this report.
- 7 Barningham is a small parish in Barnard Castle East. It has no separate parish council and is not grouped with any other parish under a common parish council.

Parish Meeting Governance

- 8 Pursuant to section 9 of the Local Government Act 1972, all parishes, whether or not they have a parish council, must have a parish meeting for the purpose of discussing parish affairs and exercising any statutory functions conferred on them. The parish meeting of a parish consists of the local government electors for the parish.
- 9 The proceedings of a parish meeting are governed by Part III of Schedule 12 to the Local Government Act 1972. A parish meeting must assemble annually between 1 March and 1 June and on at least one other occasion during the year on a date to be fixed by the Chair of the meeting. At its annual assembly, the parish meeting must elect a chair, who continues in office until their successor is elected at the next annual assembly. An assembly of a parish meeting is subject to other statutory requirements, such as giving advance notice of any such assembly, attendance, voting and minute taking.
- 10 If a parish has no parish council, the Chair of the parish meeting and the proper officer of the relevant district or unitary council are the body corporate of the parish meeting and are known as “the Parish Trustees” (s.13(3)).
- 11 Pursuant to Durham County Council’s scheme of delegation to officers, set out in Part 3 of the Council’s Constitution, the Head of Legal and Democratic Services is the Council’s ‘proper officer’ for the purposes of the Local Government Act 1972 (Table 7).
- 12 In a parish without a parish council, contracts with a parish meeting are signed by the parish trustees and ownership of parish property is vested in the parish trustees. The parish trustees must act in accordance with the directions given by the parish meeting (s.13(4)). A parish meeting may appoint committees of local government electors for the parish to discharge any of its functions (s.108).

- 13 Parish meetings are local government bodies or public authorities for a number of statutory purposes. They are, for example, subject to the provisions of the Human Rights Act 1998, the Freedom of Information Act 2000 and the Equality Act 2010.

Parish Meeting Finance

- 14 A parish meeting may precept the billing authority (i.e. the county council) for the expenditure incurred in the performance of its functions (s.39(2) of the Local Government Finance Act 1992). The Chairman of a parish meeting is responsible for the issue of the precept to the billing authority. A parish meeting may only precept for expenditure relating to specific functions, powers and rights which have been conferred on it by legislation.
- 15 Barningham Parish Meeting issue an annual precept to Durham County Council, which for the financial year 2022/23 was £1,200 and, for the financial year 2023/24, is £1,600.
- 16 The accounts of a parish meeting are subject to audit in the same way as those of a parish council (s.2 of the Local Audit and Accountability Act 2014 and schedule 2, para. 12). The Chair of the parish meeting is responsible for the accounts and financial management of the parish meeting.

Parish Meeting Powers and Functions

- 17 Parish meetings have limited powers of expenditure. These include:
- Allotments:* a parish meeting may hold and administer allotments for cultivation (s.33(3) Small Holdings and Allotments Act 1908);
- Burials:* a parish meeting is a burial authority, and may therefore provide burial grounds and contribute towards the cost of burial facilities provided by others (paragraph 1(c) of Schedule 26 to the 1972 Act);
- Land:* a parish meeting may be registered as the owner of land (e.g. common land) if it has inherited ownership. A parish meeting has no general power of acquisition but may acquire land to exercise its allotments or burial powers.
- Lighting:* a parish meeting may light roads and other public places in the parish (s.3 of the Parish Councils Act 1957);
- War memorials:* a parish meeting may maintain, repair or protect any war memorial in the area (ss.1 and 4 of the War Memorials (Local Authorities' Powers Act 1923).

Why not establish a Parish Council?

- 18 To establish a parish council, a community governance review must be undertaken, following which the County Council is required to make one of the recommendations set out in section 94 of the Local Government and Public Involvement in Health Act 2007. These are:
- (a) If the parish has 1,000 or more local government electors, the review must recommend that the parish should have a council.
 - (b) If the parish has 150 or fewer local government electors, the review must recommend that the parish should not have a council.
- 19 Barningham Parish has fewer than 150 local government electors and therefore it would not be appropriate to establish a parish council.

Acquisition of Additional Functions

- 20 Under section 109 of the Local Government Act 1972, on the application of the parish meeting of a parish not having a separate parish council, the district (or unitary) council may by order confer on the parish meeting any functions of a parish council. This would allow the parish meeting to do any of those things that a parish council can do as specified in the Order.
- 21 The district (or unitary) council must send two copies of any order made under s.109 to the Secretary of State.

The Application

- 22 For reasons of flexibility, Barningham Parish Meeting seek the full powers of expenditure available to a Parish Council.
- 23 In practice however it is envisaged that expenditure will be principally confined to:
- i. Providing financial assistance to the village hall committee in relation to the maintenance and improvement of the village hall, which is a listed building;
 - ii. Annual mowing of the village green;
 - iii. Maintenance of the Bull Acre, which is a grazing field owned by the parish meeting;
 - iv. Maintenance of village features, such as painting the bus shelter and maintaining seats and village name signs;

- v. Miscellaneous expenditure, such as maintenance of the defibrillator at the village hall and servicing the village website.

The Village Hall

- 24 Pursuant to an [Order dated 27 May 1949](#), ownership of Barningham Village Hall is vested in the Official Trustee of Charity Lands. The Trust Premises are held on trust under the Order:

“for the purposes of physical and mental training and recreation and social moral and intellectual development through the medium of reading and recreation rooms library lectures classes recreations and entertainments or otherwise as may be found expedient for the benefit of the inhabitants of the Parish of Barningham ... and its immediate vicinity without distinction of sex or of political religious or other opinions subject to the provisions of these presents”.

- 25 A registered charity, [Barningham Village Hall \(charity number 1012226\)](#), administer and manage the hall. A copy of their constitution appears on the village website at barninghamvillage.co.uk/barningham-village-hall/village-hall-constitution-2019/.
- 26 Pursuant to [section 19 of the Local Government \(Miscellaneous Provisions\) Act 1976](#), a parish council may contribute by way of grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing any recreational facilities which a parish council would have power to provide.
- 27 It is worth noting that some of the trustees of Barningham Village Hall hold positions of responsibility within the Parish Meeting, namely the Chairman, Clerk and Treasurer. Whilst there is nothing untoward about this, should the power pursuant to section 19 be granted and subsequently exercised, those trustees should be mindful of the potential for conflicts of interest to arise, or the appearance of conflict, and may wish to consider delegating decisions relating to the Village Hall to a committee.

The Village Green

- 28 According to the Register of Town and Village Greens held by Durham County Council, Barningham Village Green is registered common land in private ownership (registration number VG 1074). Given that it appears to have a registered owner, the local authority do not have powers under the Commons Acts to manage the Green, and cannot, therefore, grant express powers to incur expenditure on its maintenance to the Parish Meeting. (See below, however, for alternative powers of expenditure available under ss. 111 and 137 of the Local Government Act 1972.)

- 29 Commoners and landowners may set up a statutory group known as a 'commons council' or, alternatively, a voluntary group known as a 'commons association' for the purpose of making decisions about how the village green should be managed. Alternatively, the Parish Meeting may wish to consider seeking a transfer of ownership of the land. This, however, would be a matter for the Parish Meeting to consider.

Bus Shelters and Seats

- 30 [Section 1 of the Parish Councils Act 1957](#) provides the power to provide and maintain seats and shelters for the use of the public.

Other items of Proposed Expenditure

- 31 [Section 137 of the Local Government Act 1972](#) enables parish councils to incur expenditure for certain purposes, not otherwise authorised, which in their opinion is in the interest of, and will bring direct benefit to, their area or any part of it or all or some of its inhabitants. The benefit obtained must be commensurate with the expenditure incurred. The annual expenditure must not exceed the total electorate multiplied by the annual statutory limit per elector.
- 32 In 2022/2023, the electorate of Barningham Parish was 127 and the annual statutory limit per elector was £8.82, meaning that the statutory annual expenditure limit for that year under s.137 of the Act was £1,120.14 (127 x £8.82).
- 33 [Section 111 of the Local Government Act 1972](#) affords parish councils subsidiary powers to do anything (including incurring expenditure) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

Current Expenditure

- 34 Barningham Parish Meeting publish the minutes of their meetings and financial documents on their website at:
barninghamvillage.co.uk/barningham-parish-meeting/.
Their financial statements appear at:
barninghamvillage.co.uk/barningham-parish-meeting/parish-meeting-finance/.
Copies of their Treasurer's Report and statement of Income and Expenditure as at November 2022 also appear at **Appendix 3** to this report.
- 35 As can be seen from the published documents, over the last few years, the precept has principally been used to pay for mowing of the Village Green and to financially assist the Village Hall. This is not expenditure

that the Parish Meeting presently has statutory power to incur, and they now seek to correct that position.

36 At a Parish Meeting on 29 November 2022, a precept of £1,600 was agreed for 2023-24. Projected expenditure was:

- Grass cutting, £950
- Village Hall hire, £25
- Refurbishment of a public seat, £200
- Road signs, £200
- Defibrillator parts, £200
- Village website hosting, £50
- Affiliation to County Durham Association of Local Councils, £21.50
- Insurance, £84
- Total £1,730.50

In addition to the precept, the Parish Meeting receive an annual rental income of £101 in respect of the grazing field known as Bull Acre.

Options

37 The following options are available:

Option 1: Do not grant the application.

Option 2: Grant the application in full, i.e. all of the powers of expenditure available to a parish council.

Option 3: Grant the application in part, i.e. certain (but not all) of the powers of expenditure available to a parish council.

38 A valid application has been received from Barningham Parish Meeting to extend their powers of expenditure to allow them to raise funds by way of precept to carry out certain additional functions which the Meeting, i.e. the electorate of Barningham, consider appropriate to meet their locally expressed and agreed needs, requirements and ambitions.

39 Officers recognise, however, that Barningham is a small parish who do not need all of the powers available to a parish council. The additional accounting burden of enhanced powers of expenditure is also recognised and Barningham Parish Meeting will need to put systems in place for this.

40 Should certain enhanced powers of expenditure be granted to Barningham Parish Meeting, and their exercise prove successful, the Parish Meeting would not be precluded from making a further application for additional powers on a future date. Conversely, should the exercise of enhanced powers prove unsuccessful, or circumstances

change, any power granted, may be rescinded by further Order at a future date.

- 41 It is considered and recommended therefore that the limited functions set out in the draft order appearing at **Appendix 4** to this report would be appropriate at this time, namely those relating to the Village Hall, maintenance of public seats and the bus shelter, the power under section 137 of the Local Government Act 1972 to incur expenditure not otherwise authorised (capped by reference to the statutory limit), and the subsidiary power under Section 111 of the 1972 Act to incur expenditure which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
- 42 A copy of the draft order appended to this report has been provided to Barningham Parish Meeting, and it was considered at their Annual Parish Meeting on 26 April 2023, when residents voted unanimously to endorse its submission to Durham County Council. Whilst the draft order is in more limited terms than the Parish Meeting's original application, they understand the rationale for this, and consider it to be a good first step.

Indemnity for Proper Officer

- 43 As identified above, the Proper Officer of the County Council, together with the Chairman of the Parish Meeting, constitute the Parish Trustees. The Proper Officer has no discretion other than to abide by the directions given by the Parish Meeting.
- 44 The Council is able to provide an indemnity for an officer under the [Local Authorities \(Indemnity for Members and Officers\) Order 2004](#). An indemnity may be provided in relation to any action or failure to act by a Member or an Officer which is authorised by the Council or forms part of or arises from any duties placed upon that Member or Officer as a consequence of any function which he or she exercises. No indemnity under the Order may relate to any action or failure to act which constitutes a criminal offence or is as a result of fraud or deliberate wrongdoing and recklessness on the part of the Member or Officer concerned.
- 45 It is considered and recommended that an indemnity should be given by the Council to the Proper Officer, who is obliged to act as a Parish Trustee by virtue of the provisions of the Local Government Act 1972. Any action or failure to act would arise directly due to the duties which are placed upon the Proper Officer under the Act.
- 46 The County Council is able to obtain indemnity insurance in respect of its officers. However, the cost of any additional premium will need to be

met by the Parish Meeting as a pre-condition of executing the s.109 order.

Conclusion

- 47 The Council is required to consider the application made by Barningham Parish Meeting for an Order under s.109(1) of the Local Government Act 1972 conferring upon it the powers of expenditure available to parish councils.
- 48 Should an Order be made, it will be necessary for copies to be sent to the Secretary of State for Levelling Up, Housing and Communities.

Background papers

None

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Appendix 1: Implications

Legal Implications

A parish meeting may request that the district council confer any of the powers of a parish council on the parish meeting under S109 of the Local Government Act 1972, provided that there is not already a separate Parish Council. If the Council makes the order sought, then it must send 2 copies to the Secretary of State (s.109(2)).

The decision sought is not a function which the Executive is precluded from exercising pursuant to Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulation 2000 and is not one which has otherwise been reserved to Full Council or delegated to any of its committees or sub-committees. Accordingly, Cabinet has authority to make the decision sought in this report.

Finance

The proposed order will have financial implications for the Parish Meeting. If they are given the powers of a Parish Council, they will have a larger budget to manage and will need to ensure arrangements are in place for management of the increased budget.

If the Parish Meeting's application is granted, the report recommends that the County Council indemnify their Proper Officer for the purposes of undertaking the duties of a Parish Trustee. The Council are able to insure against this risk and the cost of any additional insurance premium will need to be met by the Parish Meeting.

Consultation

The Parish Meeting have confirmed that the proposal to seek the powers of a Parish Council was put to their Annual Meeting in May 2021.

The Annual Meeting was advertised in the local news bulletin 'The Flyer' over a two-month period. Posters were displayed in the village. Notice of the meeting was posted on the village website and emailed to residents.

The Annual meeting was attended by 13 Parish residents and on a show of hands 12 voted in favour of the proposal with no-one against. The publicity for the Meeting made clear that residents who did not attend could give their views on the matter in writing, none have done so, either for or against.

The two County Councillors representing Barnard Castle East were also consulted on the Parish Meeting's application.

The Draft Order appended to this report was considered at the Annual Parish Meeting on 26 April 2023, when residents unanimously voted in favour of its submission to Cabinet.

Equality and Diversity / Public Sector Equality Duty

Parish meetings are subject to the Equality Act 2010 and must not discriminate against a person with a protected characteristic (meaning age, disability, gender reassignment, marriage and civil partnership, gender, pregnancy and maternity, race, religion or belief or sexual orientation) as employers or in the provision of services or in the exercise of their functions.

Climate Change

None specific within this report.

Human Rights

None specific within this report.

Crime and Disorder

None specific within this report.

Staffing

The work required will impact on staff time, but this can be accommodated from within the existing resources.

Accommodation

None.

Risk

None specific within this report.

Procurement

None specific within this report.