

**BARNSLEY METROPOLITAN BOROUGH COUNCIL**

**This matter is not a Key Decision within the Council's definition and has not been included in the relevant Forward Plan**

**Report of the Assistant Chief Executive  
Legal and Governance**

**LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN  
HEALTH ACT 2007: COMMUNITY GOVERNANCE REVIEW:  
PETITION: BRIERLEY TOWN COUNCIL**

**1. Purpose of Report**

- 1.1 To give consideration to the formal Terms of Reference for a Community Governance Review which the Council is required to carry out under the 2007 Act in respect of Brierley Town Council.

**2. Recommendation**

- 2.1 **That the Terms of Reference for the Community Governance Review of the Parish of Brierley be recommended to the Council on the following basis as set out in paragraph 4.8 of the report:**

**"1.To consider whether the existing arrangements for Community Governance within the Parish of Brierley:**

- are effective and convenient**
- appropriately reflect the identity of the community within the area**
- appropriately reflect the interests of the community within the area**
- are appropriately organised to align with Barnsley Council's new Area Governance arrangements**

**2.To consider further :**

- the implications for the proper and effective representation of the identities and interests of the community and;**
- whether there would be better community engagement and more effective delivery of services within the area .**

**if there were no longer to be a Town Council for the Parish of Brierley.**

**3. To consider further the implications of there being any outstanding financial liabilities of Brierley Town Council if the Town Council were to be abolished and the fairness of any such liabilities falling on tax payers who were not residents of the Parish of Brierley. "**

### **3. Background**

- 3.1 The Council has received a petition signed by the prescribed number of registered electors to undertake a Community Governance Review in respect of the Parish of Brierley. A copy of the Petition is attached as Appendix 1 to the report.
- 3.2 At its meeting on 4th December 2013 the Cabinet resolved to consult on the terms of reference for such a Review and subject to the outcome of the consultation to make appropriate recommendations to the Council at its meeting on 6th February 2014 to enable such a Review to be undertaken.
- 3.3 A public notice appeared in the Barnsley Chronicle on 13th December 2013, inviting comments on the Terms of Reference for the Review. Notice was also given on the Council's web site.

### **4. Current Position**

- 4.1 There has been a very limited response to the consultation on the Terms of Reference. One letter and two e mail communications have been received.

These representations express the view:

- that the local community do not wish there to be a Parish Council and that there has been a previous vote to that effect in a Parish Poll and the situation should be similar to adjacent areas such as Cudworth and Monk Bretton that do not have a Parish Council

- that the Town Council has not properly managed its finances and that in view of these past events consideration should be given to its ability to do so in the future

- that as it was the Town Council and not the local community that created its current financial difficulties the local community should not be expected to address the liabilities and that these should be taken on by Barnsley Council

- that consideration should be given to whether the local community is actually receiving additional services for the additional Council Tax that is paid.

- 4.2 In undertaking a Community Governance Review legislation provides that a Principal Council must have regard to the need to secure that Community Governance within the area under review:

- reflects the identities and interests of the community in that area;

- is effective and convenient

The Principal Council must take into account any other arrangements (apart from those relating to Parishes) that have already been made or that could be made for the purpose of community representation or engagement in respect of the area under review. This would include for example the existing Area Governance arrangements established under the Council's Constitution.

### Statutory Guidance

- 4.3 The Principal Council must have regard to the statutory guidance which has been issued by the Secretary of State. The following extracts from the statutory guidance are of particular relevance.

- 4.3.1 *"Terms of reference will need to be drawn up or modified where a valid community governance petition has been received by the principal Council. Local people will be able to influence the terms of reference when petitioning".*

*"Local people may have already expressed 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.*

*Ultimately, the recommendations made in a community governance review ought to bring about improved community engagement, better local democracy and result in more effective and convenient delivery of local services".*

- 4.3.2 *"Principal Councils will need to consult local people and take account of any representations received in connection with the review.*

*When 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".*

- 4.3.3 *"In deciding what recommendations to make the principal Council must have regard to the need to secure that community governance reflects the identities and interests of the community in that area and is effective and convenient".*

*"In making its recommendations, the review should consider the information it has received in the form of expressions of local opinion on the matters considered by the review, representations made by local people and other interested persons*

*In taking this evidence into account and judging the criteria in the 2007 Act against it, a principal Council may reasonably conclude that a recommendation set out in a petition should not be made. For example, a recommendation to abolish or establish a Parish Council, may negatively*

*impact on community cohesion, either within the proposed parish area, or in the wider community within which it would be located, and therefore should not be made”.*

- 4.3.4 *“Section 88 of the 2007 Act provides for a community governance review to recommend the alteration of the area of, or the abolition of, an existing parish as a result of a review. The area 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”.*

- 4.3.5 *“The abolition of parishes should not be undertaken unless clearly justified. Any decision a principal Council may make on whether to abolish a Parish Council should not be taken lightly.*

*Under the previous parish review legislation, the Local Government and Rating Act 1997, the Secretary of State considered very carefully recommendations made by principal Councils for the abolition of any parish (without replacement) given that to abolish parish areas removes a tier of local government.*

*Between 1997 and 2008, the Government rarely received proposals to abolish Parish Councils. It received only four cases seeking abolition and of these only one was approved for abolition by the Secretary of State”.*

- 4.3.6 *“Where a community governance review is considering abolishing a Parish Council we would expect the review to consider what arrangements will be in place to engage with the communities in those areas once the parish is abolished. These arrangements might be an alternative forum run by or for the local community, or perhaps a residents' association.*

***It is doubtful however, whether that abolition of a parish and its council could ever be justified as the most appropriate action in response to a particular contentious issue in the area or decision of the Parish Council”.***

#### Determining the Terms of Reference of the Review

- 4.4 The Petition is in principle valid in seeking the dissolution of the Parish Council. But it is apparent that the basis on which dissolution is being sought as set out in the Petition with reference to this historic financial difficulties of the Town Council and its management, which are also reflected in the limited representations which have been received with regard to the Terms Of Reference, is not within the scope of the legislation or the Guidance.
- 4.5 The issues that need to be addressed relate to an assessment as to the needs of the effective governance of the Brierley Parish area. The paragraph in the guidance highlighted above is of particular significance. It would not

therefore be appropriate to include issues relating to the circumstances in which the Town Council got into financial difficulties within the Terms of Reference of the Review.

- 4.6 In any event the issues of concern with regard to the financial management of the Town Council are historical and are attributable to the dishonest behaviour of the former Clerk. The finances of the Town Council have been stabilised with Barnsley officers providing significant ongoing support albeit that the Town Council faces considerable financial burdens and pressure on the Parish Precept. There is no basis to conclude that the Town Council will not be managed properly in respect of the future conduct of its affairs. This essentially addresses one of the issues raised in the response to the consultation on the Terms of Reference.
- 4.7 The substance of the concern with regard to the financial position of the Town Council is essentially founded in the public dissatisfaction as to the level of the Parish Precept and this is not an issue relevant to effective Community Governance.
- 4.8 It is therefore recommended that the Terms of Reference of the Review do consider or take into account such issues. Having regard to the statutory guidance it is suggested that the Terms of Reference of the Review should be as follows:

"1.To consider whether the existing arrangements for Community Governance within the Parish of Brierley:

- are effective and convenient
- appropriately reflect the identity of the community within the area
- appropriately reflect the interests of the community within the area
- are appropriately organised to align with Barnsley Council's new Area Governance arrangements

2.To consider further :

- the implications for the proper and effective representation of the identities and interests of the community and;
- whether there would be better community engagement and more effective delivery of services within the area ".

if there were no longer to be a Town Council for the Parish of Brierley.

Dissolution of the Town Council would in accordance with the regulations accompanying the legislation result in the residual liabilities being transferred to Barnsley as the Principal Council. This would effectively mean the Council

writing off the £480,000 loan given to the Town Council and other potential liabilities. In these circumstances it would be appropriate to include this issue as a further matter to consider within the Terms of Reference of the Review:

3. "To consider further the implications of there being any outstanding financial liabilities of Brierley Town Council if the Town Council were to be abolished and the fairness of any such liabilities falling on tax payers who were not residents of the Parish of Brierley."

#### Community Perception

- 4.9 The community perception however nevertheless remains strongly focused on the issue of the background to the financial difficulties of the Town Council and also to the ongoing financial burden of the Parish Precept. At a public meeting organised by the Town Council held on 16th October 2013 this issue was the focus of the debate and a clear view expressed amongst those attending that the Town Council should be abolished to avoid the continued burden on the local taxpayers of the cost of the Parish Precept.
- 4.10 It was recognised by the Cabinet in considering the Petition at its meeting on 4th December that there is a perceived expectation within at least a section of the local community that Barnsley Council should act to relieve local taxpayers of this burden and attitudes towards Barnsley Council generally within the community seem negative as a result of this particular issue. This perception is relatively long standing. There was a Parish Poll undertaken in July 2001 in which a 91% majority of those voting on a turnout of 35% expressed the view that the Town Council should be abolished.
- 4.11 The Council undertook a Statutory Review following the Parish Poll and concluded that there was no basis not to continue with a Parish Council as a representative body for the area neither was there any significant evidence that the Parish Precept represented a "double rating" liability for facilities that were provided elsewhere within Barnsley funded from the Council Tax. (This addresses one of the issues raised in the consultation response on the Terms of Reference.)
- 4.12 A concession was subsequently made to the Town Council arising from that report through the provision by Barnsley Council with effect from 2005/6 onwards of a grant of £30,000 to assist towards the cost of grounds maintenance expenditure. Nevertheless there has remained a relatively negative perception of Barnsley Council which recent events have had the tendency to reinforce.
- 4.13 The Cabinet therefore concluded that it would be advisable to consider in parallel with the conduct of the statutory Review undertaking an exercise to examine the potential for a strategy to alleviate progressively some of the burden on the Parish precept to return it to a level which is more acceptable to the community. Clearly it would not be acceptable to write the loan off at the expense of the taxpayers of Barnsley overall which would also be an unwise

precedent to set in respect of other Parish Councils that may encounter financial difficulties in the future.

Such a strategy would need to involve potentially a combination of:

- Assistance to the Town Council in generating capital receipts from the sale of assets;
- Assistance to the Town Council in securing the reduction in the cost of operating existing facilities through promotion of greater co production and reduced use of in house capacity;
- Transfer of Town Council facilities for no capital cost to Barnsley Council albeit with an expectation that levels of service would need to be reviewed alongside the overall Future Council budget exercise for 2015/16 and beyond;
- Additional limited revenue support from Barnsley to the Town Council.

4.14 Whilst there is the need to undertake more detailed analysis there is the potential to be able to present alongside the outcome of the formal statutory Review, which is likely to conclude that the Town Council should be retained a strategy for containing and reducing the cost of the parish precept in 2015/16 and beyond and prior to the 2015 Parish Council Elections.

## **5. Consideration of alternative options**

There is a statutory obligation to progress the review and to determine its terms of reference.

## **6. Proposal**

That the Terms of Reference for the Review be approved on the basis set out in paragraph 4.8 of the report.

## **7. Local Area Implications**

The issue of the future of the Town Council and its financial pressures remain a matter of some controversy within the local community. This has the potential to disrupt work in engaging with the community in particular through the role of the Ward Alliance and Area Council. The relationship between the Town Council and the Council's Area Governance arrangements will be considered as part of the Terms of Reference of the Review.

## **8. Human Rights Implications**

There are no implications in respect of rights under the Convention.

## **9. Risk Management Implications**

Given that the Council has made a significant loan to the Town Council there is a substantial risk in the light of the financial pressures facing the Town Council that it may not be repaid. It is therefore in the interests of the Council for officers to continue to work pro actively with the Town Council during the period of the Review.

**10. Financial Implications**

The cost of conducting the Review can be contained within officer resources. In the event that the Town Council were to be abolished its residual liabilities would need to be taken into account and this is an issue which would need to be addressed in considering the implications of the abolition of the Town Council within the scope of the Review.

**11. Background Papers**

Letter and petition requesting Community Governance Review.

Statutory Guidance issued by the Secretary of State

Responses to consultation on Terms Of Reference.

**12. Contact Officer**

A C Frosdick Ext: 3001



23, Windmill Avenue,  
Grimethorpe,  
Barnsley,  
S.Yorks.  
S72 7AN.

**Subject: The Electors Petition for a Community Governance Review of the Civil Parish of Brierley.**

Dear Mr. Coppard and District Councillors,

The Local Government and Public Involvement in Health Act 2007, empowers the principal council for a district, in this case Barnsley Metropolitan Borough Council, to create new parishes and parish councils, to alter parish boundaries, to dissolve parish councils and to abolish parishes.

This process is known as a 'community governance review'.

On conducting a review the principal council must take into account the wishes of the local inhabitants.

This same Act also allows reviews to be triggered by a petition of local government electors of the area, and such a review is now being called for by the electors of the parish of Brierley.

The review the petition calls for and the recommendation it makes is that the parish of Brierley be abolished as a tier of local government.

To validate this petition it must be signed by 10% of the registered electors for the parish.

On the 14<sup>th</sup> of February 2011 the number of registered electors for the parish of Brierley was, Grimethorpe Ward 3464 electors, and the Brierley Ward 1822 electors making a total of 5286 registered electors.

Therefore the petition was required to be signed by 529 registered electors.

The petition now presented to Barnsley Metropolitan Borough Council has been signed by 1459 registered electors for the parish of Brierley or 27.6% of the registered electors.

From the petition it is clear that the recommendation and wishes of the electors is that the parish of Brierley is abolished as a tier of local government.

The electors' recommendation and reason for calling for the review is as follows:

1. Brierley Town Council being a public body has the responsibility to its precept payers and electors' to manage its finances in accordance with all the appropriate local government regulations. It has not done so.
2. This mismanagement has resulted in very substantial debt being incurred by the Town Council and the need to obtain a loan of up to £500,000 from Barnsley Metropolitan Borough Council.
3. This loan which will be used to pay the Town Council's debts will itself have to be repaid through the parish precept. It cannot benefit the parish because the precept will only be replacing monies previously obtained through the precept and government grants.

4. Because of the £500,000 loan all the Town Council's budgets must be approved by B.M.B.C.  
It is no longer an independent local authority.

The electors will not accept increased parish precepts which are simply to 'make good' the Town Council's debt and repay the loan, they will not accept the Town Council's mismanagement of its finances being the precept payers burden.

In order to abolish an existing parish council the principal council must provide evidence that it is in response to 'justified, clear and sustained local support' from the area's inhabitants. The numbers signing the petition believe that it answers all of these requirements and this is supported by the fact that the electors also sought the abolition of the parish of Brierley in 2001/02

So there has long been a latent support for its abolition.

This was when a parish-poll was held for it to be abolished.  
Of the poll 1231 of the electors (91% ) voted for the parish to be abolished.  
123 of the electors ( 09% ) voted to keep the parish.

The turnout was 36% which for a parish-poll was exceptional.

The review by B.M.B.C decided to ignore the expressed wishes of the majority and accept the vote of the minority.

The recommendation of the electors is that they wish the civil parish of Brierley to be abolished as a tier of local government and the reason why is clear and unambiguous, and on their behalf I submit this petition for a community governance review of the parish of Brierley.

Yours faithfully,

*F. Hardy*

F.Hardy