

Frost Estate Community Governance Review
Thurrock Council

Advice Note

6 March 2015



Advice requested

We have been asked to advise Thurrock Council in relation to the Community Governance Review with regard to the Frost Estate. In particular, we have been asked to look at the practical and legal issues relating to the timetable for the approval and setting up of the Parish Council, bearing in mind the imminent Council meeting and elections.

Background/context

- 1 On 10 September 2014 Thurrock Council agreed to carry out a Community Governance Review. This was in response to a petition signed by residents of the Frost Estate who wished to have a Parish Council established. The matter was delegated from the Council to the General Services Committee under the delegations in the Council's constitution, whereby the General Services Committee is authorised to carry out the functions of the Council in relation to Parishes.
- 2 The review was duly carried out and on 10 December 2014 the General Services Committee agreed to recommend to full Council that a Parish Council be established.
- 3 The matter is due to be considered at the next meeting of Thurrock Council on March 25th 2015.

Advice

- 4 The Council is considering whether or not it is possible to approve the Community Governance Order and the setting up of the Parish at its meeting on 25 March, and so that the first elections to the Parish can be held at the same time as the local and general elections on 7 May.
- 5 There are a number of issues which the Council would need to consider. First of all, the process for setting up a new Parish Council requires the Council to undertake the review and ultimately, should it decide to agree to the formation of the new Parish Council to publish a reorganisation of Community Governance Order. Under the Local Government and Public Involvement and Health Act 2007, the act which provides for principle Councils to be able to establish Parish Councils, there is a two stage process. The Council must first of all, consider the recommendations of the review, and must consider at that stage whether to proceed to a second stage consultation on the draft recommendations made by the review. Following that, the matter goes to the full Council for decision, following which a reorganised of Committee Governance Order can be made. The guidance published by the Government about Committee Governance Reviews states that "after taking a decision on the extent to which the Council will give effect to the recommendations made in a Committee Governance Review, the Council must publish its decision and its reasons for taking that decision". The Council must also draw up the Order, and provide information about the outcome of the review to the bodies it must notify following the Reorganisation Order it makes to implement the review, particularly so that interested people are made aware not only of the outcome of the decisions but also the reasons behind the decisions.
- 6 The Council must then deposit copies of the Reorganisation Order at its main office, together with a map showing the affect of the Order and the 2007 Act also requires a Council to make available a document which sets out the reasons for the decisions it has taken and publicise these reasons. All of this inevitably takes time and the shortness of the dates between 25 March and 7 May does, in our view, significantly impact upon an effective election.
- 7 There are also some very practical reasons which mean that in our view, it is very difficult for the Council to go ahead with the proposed elections to the new Parish Council in May. The first and most important of these is that the Parish Council will not have a budget. This is because it is not possible for a precept to be set for only part of a financial year. The situation which generally pertains when the Council is considering setting up a Parish Council is for the existing principle Council to allow for an estimate precept in its own budget setting process. However, when the decision as to whether or not the Parish Council will be established has yet to be taken, as in this

case, it is not possible for the principle Council (Thurrock in this case) to consider including a precept as part of its own process. Accordingly, if the Parish Council was to be established and elections held to it, it will have no budget and so be unable to do anything, including, as it must, to appoint and pay a Clerk. To our mind this by itself is a fundamental problem.

There are also some very practical difficulties relating to holding an election for members of the new Parish Council so soon after the Council resolves to agree to the recommendations. First of all, the Council cannot be sure that a challenge by way of judicial review to the formation of the new parish can be ruled out. There are also some practical difficulties. For example, to give effect to the new parish you will need a new polling districts order, and your council meeting on 25th March is after the register for local government nominations has been produced.

Conclusion

It is very difficult, if not impossible, for elections to the new Parish Council to be held on 7th May 2015.

An alternative is for the Parish Council to be set up in shadow form and for Thurrock Council to make a grant to the shadow parish which enables it to be set up from October 2015. The shadow parish could then make an assessment towards its budget for the first financial year, decide (although this would not be binding) upon actions of the parish council, and elections could be held without any difficulty in May 2016.

This is the solution we would recommend.

Bevan Brittan LLP
March 2015