

WAVERLEY BOROUGH COUNCIL

MINUTES OF THE MEETING OF THE EXECUTIVE – 12 DECEMBER 2013

SUBMITTED TO THE COUNCIL MEETING – 18 FEBRUARY 2014

(To be read in conjunction with the Agenda for the Meeting)

- |                                  |                        |
|----------------------------------|------------------------|
| * Cllr Robert Knowles (Chairman) | * Cllr Julia Potts     |
| * Cllr Mike Band (Vice-Chairman) | * Cllr Stefan Reynolds |
| * Cllr Brian Adams               | Cllr Adam Taylor-Smith |
| * Cllr Carole King               | * Cllr Keith Webster   |

\* Present

Also present at the meeting: Councillor Diane James

120. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Adam Taylor-Smith.

121. DECLARATION OF INTERESTS

Cllr Julia Potts declared a non-pecuniary interest in Agenda Item 3, the Rowledge Governance Review, as she was a member of Farnham Town Council.

**PART I - RECOMMENDATIONS TO THE COUNCIL**

122. ROWLEDGE COMMUNITY GOVERNANCE REVIEW – REPORT ON RESULT OF SECOND CONSULTATION

*[During consideration of this item, at 2.03 pm it was RESOLVED to continue in exempt session as this item contains exempt information, as specified in Paragraph 3 of the revised Part I of Schedule 12A to the Local Government Act 1972, namely:-*

5. *Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.*

*At 2.30pm the item resumed in open session to announce the recommendations in public. It was also agreed that the (Exempt) Annexe be released to the public]*

- 122.1 At the start of the meeting it was noted that references in the report to 'The Rowledge Ward' should be taken as referring to the 'Wrecclesham and Rowledge Ward'. Likewise, references to the 'Sandrock Triangle being part of the Boundstone Ward' should be taken by Members as referring to that area being part of the 'Shortheath and Boundstone Ward'.

- 122.2 A valid Community Governance Review petition submitted to Waverley Borough Council on 19 November 2012 triggered the conduct of a Community Governance Review by the Council, which commenced on 1 March 2013. The petition was signed by the requisite number of local government electors, defined the area to which the petition related and outlined the recommendations sought. The recommendations from the petitioners were that:
- A separate parish council be established for Rowledge;
  - The boundary of the existing Rowledge BQ Borough and Town Council Ward be altered and extended to include the “Sandrock Triangle”, being all that area south-west of Sandrock Hill Road contained by the centre-line of Sandrock Hill Road and the existing boundary of Rowledge BQ Ward;
  - A referendum be held for all residents within the existing Rowledge BQ Ward together with the additional “Sandrock Triangle” area asking whether there should be a separate parish council for Rowledge;
  - Such parish council have 5 elected members; and
  - That such Community Governance Review is undertaken by WBC to facilitate an Official Order in time for elections in June 2014.
- 122.3 The area to which the petition related incorporated the Rowledge ward in full and an area referred to by the petitioners as the “Sandrock Triangle”, which falls within the Boundstone ward. Terms of Reference for the conduct of the review were outlined in a report considered by full Council and published on 1 March 2013.
- 122.4 The Council conducted a first period of consultation which commenced on 1 March 2013 with the publication of the Terms of Reference on the Council’s website. The Council consulted with those appearing to have an interest in the review. The Council consulted with Surrey County Council and Farnham Town Council. A questionnaire was issued to all households in the Farnham Town Council area required to pay council tax inviting their views. The questionnaire was issued with council tax bills to just under 17,000 households. A total of 340 responses were received from households.
- 122.5 As part of the first period of consultation, the Council also consulted with businesses and other organisations in the whole of the Farnham Town Council area. One copy of the same questionnaire was sent to all businesses that pay business rates within the Farnham Town Council area. A copy of the questionnaire was also sent to organisations including sports clubs, schools, churches, village and local groups and Residents’ Associations in the Farnham Town Council area. Around 1,400 businesses, organisations and groups were consulted. A total of 10 responses were received.
- 122.6 A report outlining the findings of the first consultation period, summarising responses received and including the representations received from Farnham Town Council in full, was considered by the Executive on 2 July 2013.

- 122.7 At the request of four members of the Executive, the Corporate Overview and Scrutiny Committee met on 22 July 2013 to scrutinise the decision taken by the Executive. The Members of the Overview and Scrutiny Committee decided to endorse the Executive's decision of 2 July 2013 regarding the format of the second stage consultation, but to submit observations which the Executive might consider.
- 122.8 The Executive considered the observations made by the Overview and Scrutiny Committee at its meeting on 3 September 2013. In accordance with Waverley Borough Council's Constitution, the Executive was required to re-consider its decision regarding the second stage consultation in light of the Overview and Scrutiny Committee's decision, and decide whether to change it before adopting a final decision.
- 122.9 The Executive noted the observations from the Corporate Overview and Scrutiny Committee. The Executive agreed to proceed on the basis of its original decision that: local government electors in the area to which the petition related be consulted during the second consultation period and that the method of consultation be by way of questionnaire sent to each local government elector falling within that area.
- 122.10 The second consultation commenced on Monday 16 September 2013 with the issue by post of the questionnaire to each local government elector on the BQ Rowledge electoral register, together with each local government elector in the area referred to by the petitioners as the "Sandrock Triangle" in the BK Boundstone electoral register. A total of 1,551 questionnaires were issued to local government electors in the Rowledge ward. 813 questionnaires were issued to electors in the Sandrock Triangle area of the Boundstone ward, with the reason being that the electoral petition requested inclusion of that area within the new parish council area. A total of 2,364 questionnaires were issued.
- 122.11 The questionnaire invited local government electors to answer yes or no to two questions.
- Question 1 asked "Do you want Waverley Borough Council to create a new parish council for Rowledge?"
  - Question 2 asked "Do you want the Sandrock Triangle area to be included if a new Rowledge Parish Council is created?"
- 122.12 Some respondents to the first consultation period stated that they felt they did not have sufficient information on which to give their view on the proposals outlined in the petition. As a result both the petitioners and Farnham Town Council were invited by the Council to submit a statement each outlining their position on the proposals. Both statements were issued with the questionnaire.
- 122.13 Each questionnaire had affixed to it prior to issue a pre-prepared label showing the elector number, the letters BQ or BK to denote the relevant ward, the elector's name and the elector's address.

- 122.14 After the conclusion of the May 2013 County Council Election and prior to the commencement of the second consultation period, Electoral Services carried out additional work to ensure that the Electoral Register was as up to date as possible. This was as a result of a recommendation made by the Electoral Commission to all Local Authorities that it would be good practice to undertake additional work to make Electoral Registers as up to date as possible prior to the expected implementation of Individual Electoral Registration (IER) in 2014.
- 122.15 As a result of this work it was identified that some electors had moved into the Rowledge and Sandrock Triangle areas where residents had not updated their details on the Electoral Register. Invitations to register to vote were sent to those electors. In addition, all requisite monthly alterations to the Electoral Register were carried out in accordance with Electoral Services' normal working practices in the same period. Conduct of these processes meant that the Electoral Register, including the register entries for the area to which the petition relates, was as up to date as possible prior to the issue of the questionnaires to local government electors.
- 122.16 During the second consultation period, when completed questionnaires were being received, questionnaires were opened daily by members of the Electoral Services team. Each questionnaire's elector label was checked against the Electoral Register and the relevant entry on the Register marked. Each questionnaire received was kept securely in a sealed ballot box until the counting process was conducted on Monday 28 October 2013.
- 122.17 Eight duplicate questionnaires were issued at the request of electors who advised that their questionnaires had been spoilt or not received in the post. Each of the duplicate copies issued was marked as a duplicate to guard against double returns being received from one elector. No double returns were received.
- 122.18 The counting of those questionnaires received was conducted at Waverley Borough Council's offices on Monday 28 October 2013. Paul Wenham, Deputy Chief Executive, was in attendance as Proper Officer for the duration of the proceedings. Also present were the Senior Manager – Elections and Corporate Projects, the Electoral Services team, a representative from the Council's Accountancy team, together with observers of Farnham Town Council, the petitioners and Waverley Borough Councillors.
- 122.19 All questionnaires were removed from the sealed ballot box and placed elector label up. They were then separated into BQ Rowledge and BK Sandrock Triangle responses according to the elector label on each questionnaire.
- 122.20 The total number of questionnaires returned by local government electors from Rowledge was 687 giving a percentage return of 44.29%. The total number of questionnaires returned by local government electors from the Sandrock Triangle area was 419 giving a percentage return of 51.54%.

The total number of questionnaires received 1106 giving an overall percentage return of 46.79%.

- 122.21 All questionnaires were then placed elector label down and the yes and no responses to question 1 from Rowledge electors were counted. 247 electors from Rowledge answered yes and 438 electors answered no, a 2:1 result not in favour of a new parish council in Rowledge. The yes and no responses to question 1 from Sandrock Triangle electors were counted. 116 electors from the Sandrock Triangle area answered yes and 300 answered no, a 3:1 result not in favour of a new parish council in Rowledge. The total number of yes responses was 363 and the total number of no responses was 738 which gives an overall 2:1 against the creation of a new parish council in Rowledge. There were a total of 5 questionnaires unmarked as to a response to question 1. There were no questionnaires adjudicated as spoilt by the Proper Officer in respect of question 1.
- 122.22 The yes and no responses to question 2 from Rowledge electors were counted. 301 electors answered yes and 355 electors answered no, a 1:1 result giving neither option a clear reaction. The yes and no responses to question 2 from Sandrock Triangle electors were counted. 145 electors answered yes and 270 electors answered no, a 2:1 result not in favour of including the Sandrock Triangle area in the Rowledge parish if a new parish council were to be created. The total number of yes responses was 446 and the total number of no responses was 625, a 3:2 result against including the Sandrock Triangle area in the Rowledge parish if a new parish council were to be created. There was a total of 34 questionnaires unmarked as to an answer to question 2, and 1 questionnaire was adjudicated as spoilt by the Proper Officer.
- 122.23 The results sheet used and completed during the counting process, and verified by the Proper Officer, has been reproduced at Annexe 1.
- 122.24 During the first week of the second consultation period, the Council received a complaint from a local elector regarding publicity issued by Farnham Town Council. The Council has been advised that additional publicity was also circulated to all electors by the petition organisers. The elector considered that Farnham Town Council appeared to have inappropriately sought to influence the outcome of the consultation being carried out during the second consultation period, not only within the 28-day periods referred to in the legislation and therefore unlawfully, but that this had been done by using public funds in issuing publicity telling residents to "Vote No".
- 122.25 This publicity was considered by the elector to be neither objective, even-handed or appropriate. The Council sought legal advice from Counsel as to whether or not the second consultation process was adversely affected by the publicity issued by Farnham Town Council, and on the question of whether the second consultation process period constituted a referendum.

- 122.26 Advice from Counsel on these points was received after the second consultation period and the counting of the questionnaires had been concluded. Counsel advised that the second consultation questionnaire was not a petition and fell within the normal definition of a referendum – being the “submission of an issue of public importance to the direct vote of the electorate”. There are, however, two caveats to that. Firstly, ordinarily a referendum vote takes place on a single day and not during a period of 6 weeks. It could therefore be concluded by a Court that this was not a referendum. Secondly, Counsel advised that it was not, however, a referendum for the purposes of Section 9M of the Local Government Act 2000, since that is limited to changes in governance of the Council itself, such as a change to a different form of Executive, and so the Local Authorities (Referendums) (Petitions) (England) Regulations 2011 did not apply.
- 122.27 In this context it is also necessary to consider the provisions of the Political Parties, Elections and Referendums Act, 2000. The Council’s second consultation, even were it to be held to be a referendum, is outside the definition of a “referendum” to which the provisions of Part VII of that Act applies. That Part only applies to a referendum throughout the United Kingdom, or the whole of England or the whole of a Region (section 101). It follows that the restrictions on publications by local authorities within 28 days of the referendum in section 125 do not apply, either.
- 122.28 The Code of Recommended Practice on Local Authority Practice (March 2011) refers to section 125 of the 2000 Act in paragraph 7. It then refers to 2007 Regulations which have since been repealed. The current Regulations include the Local Authorities (Referendums) (Petitions) (England) Regulations 2011 (2011/2194), which came into force on 23 January 2012. The Code refers to a restriction imposed by the old regulation 5 which related to the publication of material within 28 days of a referendum. This is not repeated in the 2011 Regulations, which have repealed SI 2000/2852 and replaced it with a similar provision in regulation 15, which is again limited to petitions concerning a change in the council’s “constitutional arrangements”, the definition of which excludes the creation of a new parish council.
- 122.29 Finally, the Local Authorities (Conduct of Referendums) (England) Regulations 2012 (2012/323), which came into force on 9 February 2012, only apply to a referendum held under s. 9M of the Local Government Act, 2002 (which does not apply in this case – see above) or held “by virtue of regulations or order” made under any of the provisions of Part 1A of that Act (regulation 2). The latter does not apply either, because the whole of Part 1A is concerned with changes to the governance of the principal council, such as to its Executive or by creating a directly elected mayor.
- 122.30 Subsequent to receiving this advice, the Council received a question to the Executive meeting on 3 December 2013 from the same local elector. This question alleged that the Town Council had contravened paragraph 16 of the Code of Recommended Practice, which states:

“Any publicity describing the council’s policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.”

- 122.31 As a result of receiving this question, the Council sought clarifying advice from Counsel on this point. The local elector also raised a similar question relating to paragraph 16 of the Code of Recommended Practice at the Council meeting on 10 December 2013.
- 122.32 Advice received on the question to the 3 December Executive meeting conflicted with the earlier advice, and so the Council sought a fresh legal opinion from Leading Counsel in respect of all of the issues that have been raised. That advice has been received and is attached to this report at Annexe 2.
- 122.33 In summary, Counsel has confirmed the position that the second stage consultation is not a referendum for the purposes of the legislation and the Code of Recommended Practice. Further, Counsel has advised that while it is arguable that Farnham Town Council was in breach of paragraph 16 of the Code, it is by no means certain that there is a breach of the Code or that conflict with the Code rendered the Town Council’s expenditure on publicity unlawful. Further, Waverley Borough Council is not charged with determining the legality of the actions of the Town Council.
- 122.34 Counsel has not advised that the Council must re-run the second stage consultation. Had the Council received such advice then it would have considered re-running the consultation. In any event, even if the Council were minded to repeat the consultation, the Town Council’s letter has already been circulated and would remain in the public arena during a fresh consultation process. The risk in re-running the consultation is that the same complaints concerning breach of the Code would arise.
- 122.35 Importantly, while the results of any consultation exercise are very important, they are not the decisive factor in such local governance reviews. Section 93 of the 2007 Act sets out the Council’s duties when undertaking a review. The Council has a duty to consult with local government electors for the area under review, together with other interested parties. Under section 93(4) the Council must have regard to the need to secure that community governance within the relevant area both reflects the identities and interests of the community in that area, and is effective and convenient. Counsel has advised that it is open to the Council to decide that the application of those two factors favours the current governance arrangements being maintained despite a recognition of the existence of an argument that the actions of the Town Council were in conflict with the Code and/or unlawful.
- 122.36 The principle for seeking Leading Counsel’s advice was to decide whether the Council could continue with the review on the basis of the consultation

response, and to ensure that the Council is achieving the best possible outcome for the community, or whether the Council's process would be so undermined as to create a clear risk of its decision being quashed by the courts. Counsel's advice is clear in stating that the Council is able to proceed with the review.

122.37 In light of the advice and considering the risks that would arise from re-running the second stage consultation, the advice to Members is to proceed with the review process.

122.38 It should also be noted that the Council has not, at any stage, indicated either expressly or impliedly that the outcome of the responses to the Council's questionnaire would be binding upon the Council, either one way or the other. The outcome of the questionnaire is not the sole determining factor in the outcome of the governance review.

122.39 The Council will need to consider, together with the section 93(4) criteria set out above, the following:

- Any electoral imbalance that could arise were a new parish to be created. The Council is currently conducting the annual voter registration canvass process and so the electorate figures are changing on a daily basis, and will continue to do so until the new electoral register is published on 17 February 2014. As at 10 December 2013, the total electorate for Farnham is 30,579. Included in that figure is the BQ Rowledge ward electorate at 1,345 and the BP Wrecclesham ward electorate at 2,141, giving a total of 2,486 electors. The total electorate for BK Boundstone is 1,139 of which 829 electors fall into the area referred to by the petitioners as the Sandrock Triangle.
- The precedent such a decision would set for other parts of Farnham. There is clearly a possibility that if a new parish council were to be created that this would set a precedent for other wards within Farnham town to follow. It is known that residents in one other ward within Farnham town have been giving consideration to the submission of a petition to trigger a review.
- The issues raised by Farnham Town Council, for example, regarding cost savings arising from a single parish council. A difference of opinion has been expressed by Farnham Town Council and the petitioners regarding the cost of running a single parish council.
- The impact on community cohesion of community governance arrangements. The LGBC Guidance on Community Governance Reviews states that the Council should consider whether a recommendation made by petitioners will undermine community cohesion in any part of its area. In its response to the recommendations of the Commission on Integration and Cohesion the Government has defined community cohesion as what must happen in all communities to enable different groups of people to get on well together.



Community Cohesion is about local communities where people should feel they have a stake in the society, and in the local area where they live by having the opportunity to influence decisions affecting their lives. This may include what type of community governance arrangements they want in their local area. The 2007 Act requires the Council to have regard to the need to secure that community governance reflects the identity and interests of local communities; the impact on community cohesion is linked strongly to it. Community governance arrangements should reflect, and be sufficiently representative of, people living across the whole community and not just a discrete cross-section or small part of it. The Guidance states that principal councils should be able to decline to set up community governance arrangements where they judged that to do so would not be in the interests of either the local community or surrounding communities, and where the effect would be likely to damage community cohesion

Farnham Town Council has made representations that the creation of a new parish council would fragment both the Shortheath and Boundstone ward and also the Farnham Town Council area as a whole, rather than create community cohesion. Reference has been made by the Town Council to work conducted on the Farnham Design statement and the Neighbourhood plan, activities leading to community recognition for the Farnham Town Council area and representations made by the Town Council on strategic issues.

- Size, population and boundaries of a local community or parish.

The UK Census data for 2011 shows the total number of residents in the Rowledge and Wrecclesham wards as 4,616, a total number of households of 1,786 and 9.80 people per hectare. The same data shows the total number of residents in the Shortheath and Boundstone ward to be 4,123, a total number of households of 1,662 and 28.80 people per hectare.

The recommendation sought by the petitioners is to alter the boundary of the existing Rowledge BQ ward and extend it to include the “Sandrock Triangle” area. These areas clearly fall within the boundaries of Waverley Borough Council’s area. The LGBC guidance states that the general rule should be that a parish is based on an area which reflects community identity and interest and which is of a size which is viable as an administrative unit of local government. This is generally because of the representative nature of parish councils and the need for them to reflect closely the identity of their communities.

A parish council should be in a position to provide some basic services. With regards to boundaries between parishes, these should reflect the “no-man’s land” between communities represented by areas of low population or barriers such as rivers, roads or railways. Boundaries need to be, and be likely to remain, easily identifiable.

The Executive RESOLVED to

1. Note the opinions highlighted in paragraph 44 of the report and the sound processes that the Council had followed;
2. Note the legal advice provided by Leading Counsel that there was a powerful argument that Farnham Town Council had breached the Code of Recommended Practice of Local Government Publicity and/or was unlawful;
3. Note the decisive outcome of the second consultation;
4. Consider that the possible breach of the code by Farnham Town Council was unlikely to have affected the outcome of the consultation given the scale of the result; and
5. Take into account the criteria set out within paragraph 40 of the report including community cohesion and the size, population and boundaries involved.

The Executive accordingly:-

**RECOMMENDS that**

1. **the Council should not to take any further action in respect of the Petition.**

*[Reason: To outline the results of the second consultation period conducted as part of the Rowledge Community Governance review]*

**Part II – Matters Reported in Detail for the Information of the Council**

There were no matters falling within this category.

**Part III – Brief Summaries of Other Matters Dealt With**

There were no matters falling within this category.

The meeting commenced at 2.00 pm and concluded at 3.00 pm

Chairman