

**COUNCIL
6 SEPTEMBER 2018**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: INQUORATE GRAVELEY PARISH COUNCIL – SECTION 91 LOCAL GOVERNMENT ACT 1972 ORDER

REPORT OF THE SERVICE DIRECTOR - LEGAL AND COMMUNITY
EXECUTIVE MEMBER: (IN RESPECT OF LEGAL AND POLICY) THE LEADER
COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

- 1.1 To consider whether to delegate power to make Orders under section 91 Local Government Act (LGA) 1972

2. RECOMMENDATIONS

- 2.1 That Council delegates authority to the Service Director Legal and Community to make an Order under section 91 LGA 1972 in respect of Graveley Parish Council, in consultation with the Group Leaders (in the form of the draft order Appendix A).

3. REASONS FOR RECOMMENDATIONS

- 3.1 Section 91 of the Local Government Act 1972 allows the District Council to appoint a sufficient number of Parish Councillors on a temporary basis, to enable the work of the Parish Council to continue until it has sufficient Councillors to be quorate.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There are no alternative options to consider, other than not to make the Order and for Graveley Parish Council to remain inquorate

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Leader has been informed and all Group Leaders will be consulted on the appointment.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The maximum number of Parish Councillors that can be elected or co-opted to Graveley Parish Council is five; however the Council had been operating with only four following the resignation of one of the Parish Councillor in April 2018.
- 7.2 The Parish Council attempted to fill that vacancy at that time, however, they were unsuccessful.
- 7.3 On 27th July 2018, the Parish Clerk at Graveley notified the NHDC's electoral services that a further two of Graveley's Parish Councillors had resigned with immediate effect. This brought the total number of Parish Councillors down from four to two; one short of the three needed to be quorate under the legislative requirements.
- 7.4 A request for a Notice of Vacancy was simultaneously received from the Parish Clerk which was placed on the Parish Notice Board, as well as on the NHDC website. No enquiries were received before the Notice expired on 21st August 2018.

8. RELEVANT CONSIDERATIONS

- 8.1 At present Graveley Parish Council is inquorate and in effect has been paralysed from conducting any Parish business since the resignations outlined at 7.3 above. The remaining Councillors are unable to make any decisions and may not co-opt any Councillors, even on a temporary basis. Accordingly it is recommended that the Council delegate authority as set out under 2.1 to make the Order at Appendix A (with a named appointment).
- 8.2 Section 91 of the LGA 1972 provides that a District Council can make temporary appointments to a Parish Council, where there are so many vacancies in the office of parish or community councillor that the Parish or Community council are unable to act, until other Councillors are elected and take up office.
- 8.3 In addition, Section 39(4)(ii) of the Representation of the People Act 1983 enables NHDC to "*by order make any appointment or do anything which appears to them necessary or expedient for the proper holding of such an election or meeting and properly constituting the council, and may, if it appears to them necessary, direct the holding of an election or meeting and fix the date for it*".
- 8.4 The use of these powers is a non-executive function. Given that there are currently only two serving Parish Councillors on Graveley Parish Council, there is a need for NHDC to make a temporary appointment under the LGA 1972.

- 8.5 The LGA 1972 does not define 'persons' with regard to filling vacancies which may indicate that anybody whom NHDC deems appropriate may be appointed, including officers. It is usual, however, to appoint a relevant District Councillor, if they are willing to take on the role.
- 8.6 At the moment, Graveley Parish Council cannot meet, nor act. In order to ensure that it can act and is properly constituted, in both the short and long term, it is proposed that an Order be made, under the LGA 1972 Act, to appoint a person to act as a Parish Councillor, on a temporary basis, until such time that NHDC feels there is sufficient interest within the Parish to fill the vacancies by election or co-option.
- 8.7 Two copies of any Order must be sent to the Secretary of State.

9. LEGAL IMPLICATIONS

- 9.1 The Local Government Act 1972, Part II paragraph 12 states that¹:
"no business shall be transacted at a meeting of a parish council unless at least one-third of the whole number of members of the council are present at the meeting; but, notwithstanding anything in that paragraph, in no case shall the quorum be less than three".
Graveley Parish Council is therefore unable to transact business at the current time.
- 9.2 The LGA 1972 at section 91 states that *"Where there are so many vacancies in the office of parish or community councillor that the parish or community council are unable to act, the district council [or Welsh principal council] may by order appoint persons to fill all or any of the vacancies until other councillors are elected and take up office."*
- 9.3 The Council's Constitution at paragraph 4.4.1(t) states that it shall be for Full Council to arrange for the discharge of any other functions of the 'Authority' which are not executive functions. *To the extent relevant to this situation*, Full Council may nominate District Councillors to outside bodies under 4.4.1(h), and this is further delegated to the Service Director Legal and Community, where there is an in-year vacancy under 14.6.9 (xx), once an appointment has effectively been made by Full Council. Otherwise the legal implications are set out in the report.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications arising from this Report.

11. RISK IMPLICATIONS

- 11.1 It is important that Graveley Parish Council be brought out of its current state of paralysis so that it can effectively carry out the work of the Parish Council.

¹ Subject to suspension rules under paragraph 45 which no longer apply

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and “go local” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 Officer involvement following the appointment will be minimal.

15. APPENDICES

- 15.1 Appendix A - Draft Order Graveley Parish Council.

16. CONTACT OFFICERS

- 16.1 Jeanette Thompson, Service Director Legal and Community
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17. BACKGROUND PAPERS

- 17.1 The Association of Electoral Administrators - A practical guide to parish matters (in England), paragraph 1.33.