

CABINET

DATE: 4 SEPTEMBER 2008

TITLE OF REPORT: ESTABLISHING THE NEW CHURCH CROOKHAM,
ELVETHAM HEATH AND FLEET PARISH COUNCILS

Report of: Chief Executive

Ccabinet Member: Councillor Kenneth Crookes, Leader of the Council

1 PURPOSE OF REPORT

- 1.1 This paper has been written as a result of the District Council's decision to establish Parish Councils for Church Crookham, Elvetham Heath and Fleet. It sets out the main decisions and actions that have to be taken to implement that decision, and the timescales for taking them.
- 1.2 The paper also suggests a number of principles, or ground rules, to guide the setting up process. They are offered for guidance only, but will hopefully simplify and facilitate the processes involved. The Council is recommended to adopt them.

2 RECOMMENDATIONS

- 2.1 That Cabinet agree the general approach to setting up the new parish councils set out in the report
- 2.2 That Cabinet determine the basis on which the "shadow" parish councils should be set up as discussed in section 4.1(b) of the report
- 2.3 That Cabinet agree to adopt the principles for setting up the new parish councils as set out in Section 5 of the report
- 2.4 That Cabinet agree the timescale for action set out in Section 6 of the report
- 2.5 That Cabinet agree to establish a New Parish Councils Working Group as outlined in paragraph 7.4 to oversee work on setting up the new parish councils and to advise Cabinet on any related decisions required.

3 STATUTORY REQUIREMENTS

- 3.1 The statutory basis for setting up the Parish Councils is, in essence, relatively straightforward. The decision to set them up has now been taken by the District Council. The boundaries for each council have also been decided, with the exception of the boundary between Church Crookham and Fleet in the Courtmoor area. There remains a need to finalise the ward boundaries for the new parishes, and to determine how many members there will be in each ward. These remaining issues are likely to be decided at Full Council at the end of September.

- 3.2 The legal instrument for setting up the new councils will be an Order, which the District Council will draft and adopt. The Order will specify the basis on which the councils are to be established, the assets and liabilities to be transferred to them, the employees and contracts they will inherit, any property they will own, and so on. It is envisaged that the Order will be prepared in draft form in the next couple of months, but will then be continually amended and added to until it is finalised early in 2010.
- 3.3 The new Councils will start their statutory life on 1 April 2010, and they will become legal entities from that date, capable of taking their own decisions, entering into contracts, etc. The elections to the new Councils will take place in May 2010. For the period between 1 April 2010 and the elections the new Councils will be run a group of people appointed by the District Council. Once the new Councillors are elected, these persons will stand down and all decision making responsibility will rest with the newly elected Councillors.
- 3.4 Prior to 1 April 2010, the new Councils will not be separate legal entities, will not have any formal powers or decision making abilities, and will therefore only exist in "Shadow" form. It will therefore be for the District Council to make any formal decisions on behalf of the new Councils prior to 1 April 2010. Probably the most important of these decisions is setting the new Councils' budgets for 2010/11, but they may also include acquiring accommodation, employing staff, and entering into contracts and agreements on behalf of the new councils.
- 3.5 The new Councils will inherit a range of assets and liabilities from the District Council. It is for the District Council to decide precisely what those assets and liabilities should be. It is anticipated that the District Council will wish to take those decisions in consultation with representatives of the "Shadow" Councils, but the District Council is not bound by those consultations and in the case of disagreement it would be for the District Council to determine what assets and liabilities should transfer.
- 3.6 As an example, the District Council may wish to transfer an existing play area, currently managed by the District, to one of the new Councils. In doing so, it will transfer the land and its equipment as an asset, but will also transfer any liability there may be, for example for maintenance of the play area. The "Shadow" Parish Council may have views on whether that play area should transfer at all, and if so what liabilities should transfer with it. It is anticipated that the District Council will want to take those views into account, but it will not be bound by them, and ultimately the District may decide to transfer the play area, together with any liabilities, on whatever basis it sees fit. On 1 April 2010 the new Parish Council will therefore find itself with an asset and a potential liability to manage.
- 3.7 It is also possible that some members of the District Council's staff may transfer to the employment of a new Council. Under the TUPE regulations if the majority of an employee's work is transferred from one employer to another, they are entitled to transfer their employment to the new employer on the same terms and conditions of service as they enjoyed with the District Council. The decision on which staff will transfer is also entirely a matter for

the District Council, and the new Councils may therefore find themselves with transferred employees from 1 April 2010 onwards.

- 3.8 The Order will specify exactly what assets, liabilities, staff, etc are being transferred.
- 3.9 By 1 April 2010 the District Council will also have to appoint people to the “Shadow” Councils, which will run the affairs of the new Councils between 1 April 2010 and the election of the new Councils. In practice, it is suggested that the “Shadow” Councillors be appointed at a much earlier date than that, in order to create a body with whom the District Council can consult throughout the process of setting up the new Councils. The “Shadow” Councils will have no powers until 1 April 2010, and the “Shadow” Councillors will of course relinquish their positions when the new Councillors are elected.

4 MAIN AREAS OF WORK REQUIRED

- 4.1 The work involved in setting up the new Councils falls into a number of main areas, including:

a) Finalising Boundaries and Composition

- 4.2 The Council has already decided to set up the new Parish Councils, but it has not yet decided the precise boundary between the Church Crookham and Fleet Councils. It is expected that this decision will be taken at the September 2008 Council meeting.
- 4.3 At that meeting the Council will also have to decide on the ward boundaries for the new Councils (these are likely to follow the existing District Council ward boundaries), and how many members there should be in each Parish Council ward. This will give the overall composition of the new Councils.

b) Appointing the “Shadow” Councillors

- 4.4 It is recommended that the District Council appoints the “Shadow” Councillors to represent the “Shadow” Councils from April or May 2009. The District Council can appoint who it likes to these positions; they may or may not be Councillors already, and the number of “Shadow” Councillors does not need to be the same as will eventually be elected to the new Councils.
- 4.5 The “Shadow” Councils will have no legal status, will not have the power to take decisions, and will not necessarily be bound by the same sorts of rules on issues such as political representation and public consultation as “proper” Parish Councils.
- 4.6 It has been suggested that the Shadow Councillors should be elected, rather than simply appointed. This approach is not provided for in the relevant legislation and there are some legal obstacles to using it (such as whether the Electoral Register can be used for it – without use of the Register it is difficult to ensure a representative electorate). It would also bear a cost of the order of

£25,000. If Cabinet is minded to follow this approach these issues will require further exploration to see if it is feasible.

4.7 If an election is deemed undesirable or impractical, the council faces three main options for the shadow councils:-

- (a) It could proceed without shadow councils, at least until 1 April 2010;
- (b) It could appoint some or all of the existing district councillors within the new parish areas to the shadow councils;
- (c) It could appoint people who are not currently on the district council to the shadow councils;
- (d) It could appoint a mixture of councillors and non-councillors.

4.8 Whichever option is chosen, it is recommended that the shadow councils be in place from April or May 2009. This will give them a full year to get themselves organised.

c) Organise Elections

4.9 The elections for the new Parishes will take place at the beginning of May 2010. Arrangements will need to be made for these elections to take place, coinciding with the District Council elections on that day.

d) Appoint Interim Staff to the New Councils

4.10 The new Councils will need staffing resources prior to them coming into formal existence. These staff will work on setting up the new Councils' budgets, making arrangements for them to pick up and continue public services, sorting out any contracts and other agreements that the new Councils will need, and so on.

4.11 Whilst the new Councils are still in "Shadow" form, these staff will be formally employed by the District Council. In practice they may well be seconded staff from within the District Council, who will revert to their normal roles at the end of the process. However, it will probably be sensible to appoint an interim clerk for the new Councils who can be largely independent of the District Council and take the lead in looking after the new Councils' interests at a professional level. It is envisaged that this would be a fixed term appointment to cover the period until the new Councils are elected and can appoint their own staff.

e) Determine Assets and Liabilities to be Transferred

4.12 There will be a fair volume of work involved in identifying which of the District Council's assets and liabilities should transfer to the new Councils, and how those assets and liabilities should be divided between each of them. This will involve disaggregating budgets, property holdings, contracts, employees, and so on. Throughout this process it would be helpful to consult with the shadow Councils and any other affected parties, prior to the District Council reaching its decisions.

f) Set up any Joint Arrangements

- 4.13 The district council may choose to set up joint arrangements between the new councils, for example to run a facility (such as the Harlington Centre) which benefits more than one of the new councils. This might take the form of a joint committee between the new councils, with rights and obligations placed on them both individually and collectively. Other joint arrangements might be set up between the new councils and the district council, so that the Joint Committee (or whatever) includes the district as well as the parishes.

g) Setting Budgets

- 4.14 The District Council will need to set a first year's budget for each of the new Councils. This will need to take account of the assets and liabilities each Council will inherit, and will inevitably raise a degree of controversy. Most of the work of setting the budgets is likely to take place in the autumn/winter of 2009/10

h) Identifying Accommodation Needs

- 4.15 The new Councils will need appropriate accommodation for the functions they will be carrying out. This will need to be identified at an early stage and secured as appropriate, with budget provision being made as well.

i) Staffing Arrangements

- 4.16 The new Councils will need to have appropriate staffing arrangements in place for them to carry out their functions from the 1 April 2010. In some cases this will be the result of staff transferring from the District Councils; in others staff will need to be appointed to take up their duties from that date. The necessary arrangements need to be put in place to recruit those staff and ensure they are adequately trained and resourced for their new roles.

j) Finalisation of Transfer Order

- 4.17 The precise timetable for finalising the Order is not clear at present (regulations are currently awaited from the Government). The Council will, however, have to comply with any statutory requirements before making the Order, which may include specified time periods before the Order can come into effect. It may also be prudent to factor in some allowance for possible delays before the making of the Order.

5 PRINCIPLES TO GUIDE THE SETTING UP PROCESS

- 5.1 Setting up the new Parish Councils will potentially be a controversial and divisive process within the District Council. In addition to party political considerations, there will also be different interests between the District Council and the new Councils, and also between the new Councils themselves. There will also be differing views about the assets and liabilities each Council should inherit, and about how the Councils should provide

services in the future. There is also the potential for conflicts of interest for both Members and Officers involved in the setting up process.

- 5.2 With all this in mind, it is suggested that it is helpful to lay down some principles, or ground rules, in advance about how the setting up process should work.
- 5.3 In no particular order, it is suggested that these principles should include:
- a) **Fairness in Transferring Assets and Liabilities**
- 5.4 So far as possible, assets, liabilities, accommodation, staff, etc should be transferred from the District Council to the new Parishes on the basis of logical and simply understood criteria (e.g. population size). Different criteria may be appropriate for different issues.
- b) **“Shadow” Councils to Operate to Normal Parish Council Procedures**
- 5.5 It is envisaged that the “Shadow” Councils will be set up at an early stage to represent the interests of the new Councils through the setting up process. It is recommended that they operate to procedures used by “normal” Parish Councils – e.g. with standing orders, schemes of delegation, confidentiality rules, political balance, etc. This will both help the new Councils become established prior to their formal creation, and allow decisions to be taken in a manner consistent with democratic processes.
- c) **No Conflicts of Interest**
- 5.6 There is significant potential for conflicts of interest to arise during the setting up process – for example, it may be in the interests of the Parish Council if a particular asset is transferred to it, but not in the interests of the District Council for that transfer to take place. A Member or an Officer representing the interests of that Parish Council would have a conflict of interest if they also were involved in representing the District Council’s interests. Similarly, there could be conflicts of interest between the new Councils.
- 5.7 To avoid this, it is recommended that Members and Officers representing the “Shadow” Councils, should declare an interest and not take part in any District Council deliberations on the transfer process where any conflict of interest arises.
- 5.8 In practice, this would mean that any district council Member who also sat on one of the “Shadow” Councils would have to declare an interest and not take part in any District Council deliberations on a topic where a conflict of interest existed. Similarly, an Officer appointed to advise one of the “Shadow” Councils would not also be able to advise the District Council, where a conflict of interest existed.
- 5.9 Whilst this may sound onerous, the question of conflict of interest will probably only arise in a relatively small number of cases, principally concerned with the

transfer of assets and liabilities. It should not therefore pose a major problem to the setting up process as a whole.

d) **Size of “Shadow” Councils**

- 5.10 There is a balance to be struck between making the “Shadow” Councils sufficiently large to be inclusive, and yet keeping them small enough to be workable. If the Shadow Councils are to be composed entirely of Members of the district council there is also a need to ensure they are not so big that the district council is denuded of Members - to take an extreme example, if all District Councillors in the three new Parish areas became “Shadow” Councillors, nearly half the District Council might have to declare an interest and not take part in District Council consideration of an issue.
- 5.11 This problem could be lessened if the District Council were willing to appoint non-Councillors to the “Shadow” Councils, but such an approach might be controversial. Failing that, it would be advisable for the “Shadow” Councils to be kept relatively small (say, 3 Members each for Church Crookham and Elvetham Heath, and perhaps 5 for Fleet).

e) **Minimising Obligations on the New Councils**

- 5.12 In setting up the new Councils, the District Council has the ability to enter into contracts, employ staff, and otherwise impose obligations on the new Councils. It could, for example, employ a Parish Clerk on a permanent contract before April 2010 and subsequently transfer that employee to one of the new Councils.
- 5.13 To a certain extent, there will inevitably have to be some commitments made by the District Council on behalf of the new Councils, if only to ensure that services can continue to run from 1 April 2010. For example, if a play area is to be transferred to a new council, there will need to be arrangements put in place before 1 April 2010 for play equipment to be maintained. However, it is suggested that as a principle the District Council should not seek to bind the hands of the new Councils any more than necessary, leaving the new bodies free to make whatever decisions they feel appropriate once they have been elected.
- 5.14 This approach would suggest, therefore, that any new appointments which would transfer to the new Council should only be made on a temporary or fixed term basis; that contracts to be transferred to the new Councils should be limited to the essentials and should last only for a short period; that leases for accommodation should only be entered into on a short-term basis, etc.
- 5.15 This approach would not preclude the District Council transferring an existing permanent member of staff to the new Council, transferring the freehold or a long lease on a property to a new Council, etc. However any new arrangements should seek to leave as much flexibility for the new Councils as possible consistent with the effective continuation of service provision.

f) **Maintenance of Existing Service Standards**

- 5.16 Until each new Council is elected, no one will know what standards of service it will wish to provide to the public. Where services are transferred from the District Council to the new Councils, therefore, it is suggested that this should happen on an “as is” basis, rather than the District Council seeking to vary service standards in anticipation of possible decisions by the new Councils. This will allow existing service standards to be maintained until the new Councillors can take their own decisions about what they want to do with each service in future.

g) **Transfer Functions to Match other Parish Councils**

- 5.17 The new Councils will have the “normal” Parish Councils legal powers to provide services to the public in their areas. In many cases, the District Council has power to provide similar services. Because there have not been Parish Councils in Church Crookham, Elvetham Heath and Fleet before, the District Council currently provides a number of services in those areas which are provided by Parish Councils elsewhere in the District.
- 5.18 The District Council could choose, if it wished, to continue to provide those services even after new the Councils have been set up. However, it is suggested that principles of fairness, and the desire to avoid double taxation, means that the District Council should seek to divest itself of those services when the new Parishes come into existence. As a general rule, the District Council should not seek to continue to provide “Parish Council” services after 1 April 2010.

6 **TIMESCALES**

- 6.1 The following is a suggested timetable for the setting up process:

September 2008	Boundaries and composition of new Councils agreed
December 2009	First draft of Transfer Order completed
April/May 2009	“Shadow” Councils appointed; interim staffing appointments made
October 2009	Start budget setting process
February 2010	Budgets finalised
March 2010	Latest date for Council to approve final Transfer Order
April 2010	New Councils come into formal existence; assets, liabilities, staff and functions transfer
May 2010	New Councillors elected

7 **ACTION**

- 7.1 It is recommended that the work involved in setting up the new council, which is likely to be considerable, be shared between a number of member/officer working groups.
- 7.2 The final approval of the Transfer Order will be a decision for Full Council, acting on the advice of Cabinet.

- 7.3 The work of handling democratic issues, such as electoral arrangements, could continue to be handled by Democratic Structures Working Group (DSWG) but work in relation to budgets, property, the management of assets, etc is likely to require a different set of skills and interests.
- 7.4 Accordingly, it is recommended that Cabinet set up a further member group (a “New Parish Councils Working Group”) to oversee this work, at least for the time being. It is suggested that this group should be fairly small – say, with four district council members in the ratio 2 Conservatives, 1 Liberal Democrat, and 1 Community Campaign Hart. It would also be helpful to have a representative of the existing parish councils on the Group, and so it is suggested that the Chairman of the Hart District Association of Parish Councils be invited to join the Group as well
- 7.5 As the transfer date approaches it may be necessary to set up further groups to look at particular issues as they arise.

CONTACT: Geoff Bonner – Chief Executive

EXTENSION: 4108 EMAIL: geoff.bonner@hart.gov.uk