

Committee	-	Licensing & General Purposes
Date	-	23 March 2006
Report of the	-	Director of Resources
Subject	-	Proposal for Separate Parish Council Status for Winchelsea

Recommendation: It be **RESOLVED** that a Parish Review be conducted of the Icklesham Parish Council area and that the Chief Executive be authorised to take all necessary action in relation thereto, including the publication of notices in the local press and otherwise as the Committee consider necessary.

This report supports the Key Aim of Leading and Involving the Community

Head of Service: Trevor Elliott

Background

1. A proposal has been made for a new Parish Council to be created out of the existing Icklesham Parish Council. The Parish Council is presently composed of the four separate Parish Wards of Icklesham, Winchelsea, Winchelsea Beach and Rye Harbour. The proposal, if agreed, would see the creation of a separate Parish Council for Winchelsea. Attached at Appendix A to this report is a plan showing the area of Icklesham Parish Council as presently warded.

Statutory Provisions and Circular Guidance

2. The statutory provisions with respect to the creation of Parish Councils are to be found in Part 2 of the Local Government & Rating Act 1997. These functions together with subordinate legislation are expressly declared not to be executive arrangements and they are therefore the responsibility of this Committee.
3. Attached at Appendix B to this report is a full recital of the statutory provisions. In summary, the District Council may (but is not required to) conduct a review of the whole or any part of its area for the purpose of considering whether or not to make any recommendation to the Secretary of State for the creation, abolition or alteration of Parishes.
4. Once the District Council has decided to recommend the creation of a new Parish, it must (unless there are fewer than 200 electors) include in the recommendations its conclusions for the establishment and electoral arrangements of a new Parish Council and for the residual parishing of the area.

5. The Secretary of State may then accept (with or without modifications) or reject the recommendations, or he may refer them to the Electoral Commission. Where he does so, the Commission must then carry out a simplified form of review having regard to the District Council's recommendations, and report back to the Secretary of State either confirming those recommendations or making further or different proposals. The Secretary of State may either accept (with or without modifications) or reject the recommendations or proposals.
6. In making its assessment of the need for new or changed parish arrangements, the District Council must observe the requirements of the 1997 Act to have regard to the need (a) to reflect the identities and interests of local communities, and (b) to secure effective and convenient local government.
7. The District Council must also have regard to any guidance given by the Secretary of State. Guidance on the establishment of new Parishes and Parish Councils and on arrangements for making changes to established Parishes and Parish Councils is to be found in Government Circular 11/97. Attached at Appendix C to this report are relevant extracts from the General Considerations which the Circular advises should be taken into account by the Council in undertaking a parish review.

The Proposal

8. The impetus for a new Parish Council has come from a number of residents of Winchelsea who believe that the Parish of Icklesham has become too large and too diverse for the Parish Council to be able to adequately represent the particular interests of any of the four Wards, and that Winchelsea in particular is losing out because it is the smallest Ward. The view is taken by them that Winchelsea meets the criterion for a Parish in its own right, reflecting as it does a small, distinctive and recognisable community of interest with its own sense of identity.
9. A circular letter to residents issued by the Parish of Winchelsea Action Group (attached to this report at Appendix D) advised that a public meeting convened in Winchelsea had overwhelmingly supported the proposal that the District Council be requested to hold a referendum in Winchelsea to democratically determine the wishes of all residents, and called upon residents to write to the Chief Executive requesting a referendum in the town.
10. Attached to this report at Appendix E are the key points which have been expressed in support of separate Parish Council status for Winchelsea.

Review Process

11. The procedure to be followed by the Council in undertaking a parish review is set out in the 1997 Act. Existing Parish Councils must be consulted, as must the County Council.
12. In summary, this comprises four separate stages:

Stage 1 Publication of review and invitation of representations

Stage 2 Council's consideration of representations

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| Stage 3 | Unless the Council decides not to make any recommendations to the Secretary of State, publication of draft recommendations for change and consultation on them |
| Stage 4 | Council's consideration of representations and submission to the Secretary of State of any recommendations for change |

Summary and Conclusions

13. Given the scale of support from within the Town for separate Parish Council status (of the 68 households who wrote to the Chief Executive, some 44 – two thirds – signified their support for a Winchelsea Parish Council, 20 requested a referendum for the same, and only four expressed their opposition to the proposal), I believe it to be appropriate for a review to be conducted of parish arrangements in the Icklesham parish area, and to test support or otherwise throughout the Parish for the proposal. Icklesham Parish Council and those surrounding it have been alerted to the prospective review.
14. Whilst the Act requires the Council to secure that all those who may be interested in the review are informed of the decision to conduct it, of its subject matter and of the period within which representations about the review may be made, the actual process of notification is left to the discretion of the Council in that it may decide what is sufficient to achieve this duty.
15. Advice obtained from the Office of the Deputy Prime Minister is that as a first step in conducting a review, most District Councils place a notice in a local newspaper as well as sending a notice to all Parish Councils in the area. Notices may also be placed on parish notice boards. For the particular circumstances of the proposal before the Council, the clear advice from the ODPM is that the Council needs to advertise the review throughout the parish of Icklesham.
16. At its simplest, the review could be conducted on the foregoing basis. Methods adopted by other authorities for conducting a review have comprised the sending of a letter to every property in the parish, the holding of public meetings, publication of articles in newsletters, household surveys, or referenda conducted by telephone, post or in person.
17. There is no requirement as such in the legislation for a referendum to be held as part of the review process. Such mechanism formed no part either of the review of the structure of local government in East Sussex in the mid 1990s, or the review of District & County electoral arrangements in 2001 and 2004 respectively. The Committee is requested to take a view as to whether such mechanism, the cost of which would be up to £4,200, would add value to the consultation exercise.
18. In taking a view on this, the Committee should have regard to relevant guidance from Government Circular which states as follows:

"Parishes will need to serve the community for many years so it is important to seek and assess local opinions on parish proposals. All expressions of opinion are important, but over reliance on data which may give partial view is to be avoided. For example, an opinion poll might reflect short term

dissatisfaction with a district or unitary council and not provide a sound long term view; and publicity arising from campaigning might reflect the views of a vociferous minority. The quality of arguments used and independent expressions of views will have a bearing."

19. My own view is that cost considerations apart, the particular circumstances of the proposal, which will involve a consideration of both the case for the separate parishing of Winchelsea and the residual parish arrangements to be made, are not susceptible to a referendum. A household survey, on the other hand, at a cost in the order of £1,000 could more usefully seek to elicit support or otherwise throughout the parish for the separation of Winchelsea from Icklesham Parish and for the residual parish arrangements, be these the coming together of the Wards of Icklesham, Rye Harbour & Winchelsea Beach as a single Parish Council, the creation of these three Wards as Parish Councils in their own right, or the combination of one or more of these Wards with adjacent Parish Council areas.
20. This report therefore seeks authority for the conduct of a review of parish arrangements in the Icklesham parish area, and for the Chief Executive to take all necessary action in relation thereto, including the publication of notices in the local press and otherwise as the Committee consider necessary to ensure that all those affected by the review are aware of it, have the opportunity to make representations, and in all the circumstances enable the most meaningful consideration to be given by the Council.

Joy Cooper
Director of Resources

Risk Assessment Statement

A decision not to conduct a review of parish arrangements in the Icklesham area would not be challengeable other than by way of judicial review in the Courts. Such a decision would, however, be to fail to test public opinion for a change, prima facie evidence of which has been demonstrated.

Local Government & Rating Act 1997

Statutory Provisions with respect to District Reviews

Section 9

- (1) This provides the basic power for a District Council to review the arrangements in regard to parishes for the area of the Council.
- (2) The recommendations which may be made by the Council may take three separate forms with different consequences. First, the creation of new parishes, whether *de novo* or by aggregation, amalgamation or separation of the whole or part of existing parishes. Secondly, the abolition of existing parishes. Thirdly, alterations to the boundaries of an existing parish.
- (3) & (3A) Once the District Council has decided to recommend the creation of a new parish it is under a duty to include in the recommendations the conclusions for the establishment of the Parish Council. It must also make proposals to the Electoral Commission for the Council's electoral arrangements.
- (4) Subs.(3) does not apply to those proposed new parishes with fewer than 200 electors. For these, the Council may still make such recommendations, but is under no duty to do so.
- (5) In relation to proposals to alter the boundaries of an existing parish, the power is given to the District Council to recommend changes to any divisions into wards, number and boundaries of any such wards, the number of councillors for each ward and the total for the parish as a whole, and the name of any ward. In considering such changes, regard must be had to the provisions of Section 18.
- (6) Where the Council makes any recommendations under subs.(2), it may also make consequential recommendations for the alteration of the boundaries of any electoral division or ward of a county or district respectively. It may also recommend a consequential alteration to the number of councillors for the district ward.

Section 10

- (1) To allow those affected to express their views, notice must be given by the District Council of the decision to hold the review, its subject matter, and the period within which any representations about that subject matter must be made to the Council. Those to whom such notice must be given is defined widely as all those who may be interested and is not left to the discretion of the Council. However, the process of notification is left to the discretion of the authority in that it may decide what is sufficient to achieve this duty. This must also be done as soon as is reasonably practicable.

- (2) The District Council is required to take account of any representation about the subject matter of the review provided it is made in compliance with the time limit laid down by the Council.
- (3) Following the review and having taken into account the representations, the District Council may decide not to make any recommendation to the Secretary of State or proposals concerning electoral arrangements to the Electoral Commission. However, where it is proposed to make such recommendation or proposal, other procedural stages must be followed. The Council must prepare the draft recommendation or proposals and again notify all those who may be interested together with the period within which further representations must be made. Again, the process of notification is left to the discretion of the authority in that it may decide what is sufficient to achieve this duty and this may differ from the method adopted in regard to the duty under subs.(1). The Council must also deposit copies at their principal office for public inspection. Again it is made explicit that the Council must take into account any representations made within the specified period.
- (4) Following the second consultation exercise, the Council may decide to make a recommendation to the Secretary of State or proposals to the Electoral Commission. Where this is done, copies of the recommendation and proposals must be deposited at the principal office and again the Council must notify all those who may be interested and the period within which copies may be inspected. Again, the process of notification is left to the discretion of the authority in that it may decide what is sufficient to achieve this duty and this may differ from the method adopted in regard to the duties under subs.(1) and (3).
- (5) The copies of the recommendations and proposals must be kept available throughout the period specified in subs.(4).

Section 14

- (1) The Secretary of State is empowered to reject, or accept with or without modification, recommendations relating to the creation, abolition or alteration of parishes.
- (1A) The Electoral Commission may give effect to any proposals for electoral arrangements sent to them, subject to any recommendations made to them by the Boundary Committee for England and any modifications to those recommendations agreed with the Committee.
- (2) An order may include consequential alterations of the boundaries of any electoral division of a County or a ward of a District Council. It may also recommend a consequential alteration to the number of councillors for the ward.
- (4) Following a decision to establish a new parish, the order may also contain a direction to establish a council for the parish. In respect of all parishes, an order under this section may also specify the electoral arrangements, namely the possible division into wards, number and boundaries of any such wards, the number of councillors for each ward and the total for the parish as a whole, and the name of any ward. In considering such changes, regard must be had to the provisions of Section 18.

Section 18

- (1) The bodies involved in considering the electoral arrangements for a parish council, namely the Electoral Commission, or a District Council, must comply with this section.
- (2) The body is required to consider the question of possible division into wards with specific reference to two issues. First, the practicality and convenience, in the light of the number of local government electors, of there being no division. Secondly, the desirability of the separate representation of one or more areas. This does not exclude the body taking into account other factors or, indeed, allowing other factors to outweigh the conclusion in regard to these two matters.
- (3) If the body decides to establish wards, then, in deciding on the size and boundaries of the wards, and the number of councillors in each, it must have regard to three other factors specified. Although the factors of the likely change in numbers or distribution of electors in the following five year period, the ease of identifying boundaries, and local ties are all important, this does not exclude the body taking into account other factors or, indeed, allowing other factors to outweigh the conclusion in regard to these three matters.
- (4) If the body decides not to establish wards, then, in considering the number of councillors to be elected, it must have regard to two specified factors. Although the factors of the number of electors and any change in that in the following five year period are important, this does not exclude the body taking into account other factors or, indeed, allowing other factors to outweigh the conclusion in regard to these.

Section 22

- (1) In exercising its powers a District Council must have regard to any guidance given by the Secretary of State or Electoral Commission.
- (2) The District Council must exercise its functions in the manner which appears to the Council desirable having regard to the need:
 - (a) to reflect the identities and interests of local communities; and
 - (b) to secure effective and convenient local government.

Local Government & Rating Act 1997

Parish Reviews

Extract from DETR Circular 11/97

GENERAL CONSIDERATIONS

A Local Matter

6. Since a district council now has the ability to undertake parish reviews and the procedure for establishing a new parish can be initiated by public petition, it is expected that the initiative in these matters will normally be taken at local level.

Defining a Parish

7. Parish councils have two main roles: community representation and local administration. For both purposes it is desirable that a parish should reflect a small, distinctive and recognisable community of interest, with its own sense of identity. The feeling of local community and the wishes of local inhabitants are the primary considerations.
8. The identification of a community is not a precise or rigid matter. The pattern of daily life in each of the existing communities, the local centres for education and child care, shopping, community activities, worship, leisure pursuits, transport facilities and means of communication generally will have an influence. However, the focus of people's day to day activities may not be reflected in their feeling of community identity. For instance, historic loyalty may be to a town but the local community of interest and social focus may lie within a part of the town with its own separate identity.
9. The boundaries between parishes need to reflect the "no-man's land" between communities represented by areas of low population or barriers such as rivers, roads or railways. They need to be, and be likely to remain, easily identifiable. They must fall within one district council area and must not generally cross district ward or county division boundaries.

Rural Areas

10. Most populated rural areas are already parished. It is desirable that any changes should result in parishes, or groups of parishes (see below), with sufficient population to justify the establishment of a parish council in each, rather than rely on parish government by parish meeting only. Section 16(2) of the 1997 Act requires that a parish with 200 or more electors must have a parish council, and that a parish with between 150 and 200 electors must have a council if the parish meeting resolves in favour of one. (Where a parish with a population of less than 150 resolves in favour of a parish council it is at the discretion of the district council whether or not to establish one.)

11. The focus of community feeling will differ from place to place and between different types of settlement. A scatter of hamlets may have a feeling of community within each hamlet, meriting a separate parish for each one, or amongst a number of hamlets, for which one parish covering all may be appropriate. Where a number of hamlets surround a village it may be best to base the parish on the village and its environs, provided that the sense of individual identity is not lost.