



**Council**

**Thursday, 30 September 2021**

**Petition: Community Governance Review (Bingham Town Council)**

## **Report of the Chief Executive**

**Cabinet Portfolio Holder for Strategic and Borough Wide Leadership,  
Councillor S J Robinson**

### **1. Purpose of report**

- 1.1. The Council has received a Petition entitled “Bingham, Deserves Better” (the “Petition”), from at least 635 valid signatories (i.e. from registered electors in the Bingham administrative area) calling for a Community Governance Review of Bingham Town Council.
- 1.2. The Petition was considered by Cabinet on Tuesday, 8 June 2021. The purpose of the approach was to facilitate a wider opportunity to collate views outside of the process laid out in the Council’s constitution. To achieve this, it was agreed that a Member Working Group would be set up to consider the Petition and the next steps before the Petition was referred to Council. However, subsequent legal advice recommended that the Petition be referred direct to Council (without the prior involvement of the Member Working Group) in accordance with the Council’s Standing Orders to decide whether to accept the Petition and proceed with a Community Governance Review. As a result, the previous resolution of Cabinet will not take effect and the first meeting of the Member Working Group was cancelled by delegated decision of the Chief Executive.
- 1.3. This report sets out the next steps to be taken in response to the Petition. It considers the validity of the Petition and duties of the Council in relation to it.

### **2. Recommendation**

It is RECOMMENDED that:

- a) the Council does not accept the Petition;
- b) the Council does not proceed to conduct a Community Governance Review of Bingham Town Council;
- c) the Council provides a written response to the Petition organisers, indicating its reasons for rejection of the Petition;

- d) the Chief Executive writes to Bingham Town Council and Nottinghamshire County Council sharing the contents of this report and setting out what is agreed by Council; and
- e) the Council supports a commitment to working collaboratively with Bingham Town Council in response to any requests for support from the Town Council.

### **3. Reasons for Recommendation**

3.1. The Council received the Petition from the residents of Bingham calling for a Community Governance Review of Bingham Town Council. The Petition asks the Council to:

- dissolve Bingham Town Council and take over its operation until new elections can be held; and
- reset the culture and strengthen the procedures at Bingham Town Council.

3.2. The Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) requires a Community Governance Review to be undertaken upon presentation of a valid Petition<sup>1</sup> provided it has not concluded a previous review in connection with the whole or a significant part of the area within the relevant two-year period.

3.3. The Petition is not valid within the meaning of the 2007 Act as a result of the recommendations sought falling outside of the scope of the 2007 Act. The Council is therefore not able to hold a Community Governance Review.

3.4. Moreover, the Petition is effectively seeking to trigger fresh elections at Bingham Town Council. Neither the 2007 Act nor the Government Guidance on Community Governance Reviews<sup>2</sup> (the “Guidance”) envisage the use of a Community Governance Review (“CGR”) for this purpose. The appropriate method for addressing the issues raised in the Petition is by way of standards proceedings for breaches of the Councillors Code of Conduct (“Code”).

### **4. Supporting Information**

#### *Background*

4.1. The Petition, dated 5 April 2021, seeks a CGR of Bingham parish. The Petition highlights the following concerns in relation to the running of Bingham Town Council. The following is an excerpt from the Petition:

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<sup>1</sup> Section 83, 2007 Act

<sup>2</sup> [Guidance on community governance reviews \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

What we know:

- \* The Town Clerk was unfairly dismissed and subsequently reinstated, but 'Staff Issues' still repeatedly appear on the Agendas.
- \* Excessive use of 'Private & Confidential' makes it impossible to follow key issues resulting in a lack of 'Openness and Accountability'.
- \* Staffing review commissioned two years ago, at a cost of £4550, highlighted several concerning issues within the council. Recommendations of the report have not been implemented.
- \* Correspondence between Human Resource consultants and two Councillors has been withheld from other Councillors by 'bloc' vote from the controlling group.
- \* Human Resource Consultant expenses of £9000 in this financial year (based on Council's own estimate). The Consultants have declined to quote for a new contract.
- \* Town Clerk's advice as 'Proper Officer' is regularly ignored by the controlling group.
- \* Events have resulted in the use of no less than seven 'Extraordinary' meetings in 2020.

In Summary:

Considerable time and money has been spent on Staff issues to the detriment of infrastructure projects. We also believe that progress on issues highlighted in the 2016 'Community Led Plan' and the 'Brilliant Bingham' initiative for the future of Bingham have been stifled by these distractions and regrettably neither fully embraced. This has led to ineffective performance, a weakened non-inclusive community and Council, where civic values, responsibility, and pride have been undermined, resulting in a lack of efficiency and community cohesion where standard Governance rules have been broken.

4.2. The Petition seeks a CGR with the following proposed recommendations:

What we would like:

- \* Dissolve the Council and take over the operation until new elections can be held.
- \* Reset the culture and strengthen the procedures at the Council so that the above mentioned concerns cannot continue.

- 4.3. The Petition was initially considered by Cabinet on 8 June 2021. At the meeting of 8 June 2021, Cabinet did not take a decision on the Petition as that is a decision for Council, but it resolved to establish a Member Working Group to consider the outlined request for a Community Governance Review and make recommendations to Cabinet in September 2021, which would then proceed to Council.
- 4.4. However, concerns were raised regarding the decision to form a cross-party Cabinet-led Member Working Group and the Council's adherence to the publication requirements in relation to the first scheduled meeting and the Cabinet decision. As a result, the Chief Executive took a decision in consultation with the Leader pursuant to the emergency provisions in the Council's Constitution to refer the Petition direct to Council and Cabinet's resolution dated 8 June 2021 will not take effect. This approach supports a strict interpretation of the Council's Standing Orders.
- 4.5. It should be noted that referring the Petition to Council does not overturn the decision of the executive as no decision on the Petition itself was in fact taken. It will however result on the resolutions of Cabinet not taking effect.
- 4.6. It should also be noted that standards proceedings for breaches of the Code have been followed in respect of some of the concerns raised in the Petition (and a Standards Committee hearing has been held).

### Obligation to undertake a Community Governance Review (CGR)

4.7. A CGR is a review that can be carried out by a principal authority (unitary or district Council). CGRs are undertaken in order to make recommendations for the creation of new parishes and establishment of parish councils, and about other matters such as making changes to parish boundaries and electoral arrangements<sup>3</sup>. The outcome of a CGR is that the Council or Local Government Boundary Commission as applicable may by order give effect to the recommendations.

4.8. The proposal of devolution of community governance to principal authorities was introduced in the 2006 Local Government White Paper entitled “Strong and Prosperous Communities”<sup>4</sup>:

**2.56** At present parishes are created by Government and the Electoral Commission based on the recommendations of a review carried out by the local district or unitary council, or in response to a petition by local residents. We will simplify and speed up this process by devolving the power to create parishes to district and unitary authorities, allowing them to implement the recommendations of parish reviews and to respond to petitions from local communities. We will make it clear that there will be a presumption in favour of the setting up of parish councils so that local authorities will be expected to grant communities’ requests to set up new parish councils, except where there are good reasons not to, and that existing parish councils are not to be abolished against the wishes of local people.

**2.57** However, parishes are not the most appropriate form of community governance everywhere. We will broaden local authorities’ review powers, so that in the course of a review they will also be able to consider whether other forms of community governance are more appropriate.

4.9. The nature of CGRs connects to community governance rather than council standards. The legislative change identified as required for the change in control of community governance is identified as:

- devolve the power to create new parishes from the Secretary of State and the Electoral Commission to district and unitary authorities and allow parishes to adopt alternative names;

4.10. The proposal was implemented in the Sections 79 to 102 of the 2007 Act which sets out the legislative framework for CGRs. Decision making in relation to CGRs should comply with the Guidance.

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<sup>3</sup> See section 87-92 of the 2007 Act

<sup>4</sup> [Strong and prosperous communities The Local Government White Paper CM 6939 \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

4.11. Under Section 83 of the 2007 Act, a principal council must undertake a CGR, if it is not already doing so, in response to a valid Petition which relates to the whole or part of its area. The only exception to this duty is if:

*“(a) the principal council has concluded a previous community governance review within the relevant two-year period, and  
(b) in the council's opinion the petition area covers the whole or a significant part of the area to which the previous review related.”<sup>5</sup>*

4.12. As such, provided a Petition is valid, the Council is under an obligation to undertake a CGR with terms of reference that allow for the Petition to be considered.

#### Validity of the Petition

4.13. In order to be considered valid, a Petition must meet the conditions set out in at Sections 80(3) to 80(6) of the 2007 Act. Sections 80(5) and 80(6) of the 2007 Act relate to circumstances in which a new parish is to be constituted or the area of an existing parish is to be altered and are therefore not relevant to the Petition. The conditions with which the Petition must comply are that:

- The number of signatories to the Petition must be at least 187 electors, as the Petition area (Bingham) has between 500 and 2,500 local government electors (section 80(3)(b));
- Under Section 80(4), the Petition must:

*“(a) define the area to which the review is to relate (whether on a map or otherwise), and  
(b) specify one or more recommendations which the petitioners wish a community governance review to consider making”.*

4.14. With at least 635 valid signatories, the Petition comfortably meets the number required under section 80(3)(b) of the 2007 Act. A map of the existing boundary was also provided pursuant to section 80(4)(a) of the 2007 Act.

4.15. As noted above, the Petition does propose recommendations, namely that the Council:

- “dissolve the [Bingham Town] Council and take over the operation until new elections can be held”; and
- “Reset the culture and strengthen the procedures at the [Bingham Town] Council so that the above-mentioned concerns cannot continue”

4.16. However, these are not recommendations within the 2007 Act, which a CGR is lawfully able to make. The possible recommendations are specified under Section 79 of the 2007 Act which provides that a CGR is conducted “for the

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<sup>5</sup> Section 83(3)

purpose of making recommendations of the kinds set out in sections 87 to 92.”

4.17. Sections 87 to 92 of the 2007 Act provide for:

- the constitution of new parishes;
- the alteration or abolition of existing parishes;
- the consideration of whether or not a parish should have a Council;
- consequential recommendations and specifically electoral arrangements;
- the grouping or de-grouping of parishes, and consequential matters.

4.18. It could be argued that the first requested recommendation seeks abolition of the Parish Council (rather than an election). However, it should be noted that where a CGR is required to make recommendations as to whether or not a new or existing parish should have a council, it must make a recommendation that a parish has a council if it has 1,000 or more local government electors<sup>6</sup>. Bingham has more than 1,000 residents and as a result, the outcome sought (if this is the case) is not a recommendation the Council should make.

4.19. Overall, it is not considered that the recommendations sought in the Petition fall within the scope of possible recommendations that a CGR could consider making. As a result, the Petition fails to meet the requisite condition under 80(4)(b) of the 2007 Act and is not valid. The Council is not therefore obliged to undertake a CGR.

#### Undertaking a discretionary CGR

4.20. Notwithstanding that the Council is not obliged to undertake a CGR as a result of the Petition, it may do so at any time. Indeed, the Guidance indicates that it should consider on a regular basis whether such a review is needed:

- 26.** Otherwise, the 2007 Act provides for a principal council to conduct a community governance review at any time. Principal councils will want to keep their community governance arrangements under review, and they should ensure that they consider on a regular basis whether a review is needed. A review may need to be carried out, for example, following a major change in the population of a community or as noted earlier in this chapter (see paragraph 15) to re-draw boundaries which have become anomalous, for example following new housing developments being built across existing boundaries. Principal councils should exercise their discretion, but it would be good practice for a principal council to consider conducting a review every 10-15 years – except in the case of areas with very low populations when less frequent reviews may be adequate.

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<sup>6</sup> Section 94, 2007 Act

4.21. The Guidance identifies circumstances in which it would be helpful to undertake a CGR, namely where there have been changes in population, or in reaction to specific or local new issues<sup>7</sup>. The circumstances set out in the Petition relate to “ineffective performance” from Bingham Town Council rather than to issues concerning parish boundaries. As such, a CGR would be of limited benefit in addressing the concerns raised. Indeed, whilst the Council could proceed to undertake a CGR, it would be forced to conclude that the recommendations sought could not be made as they are not within the scope of the 2007 Act.

4.22. Instead, the appropriate process for removal of an ineffective council is a democratic election which it is not in the power of the Council to trigger whether through a CGR or otherwise.

4.23. Furthermore, the Guidance indicates that CGRs should not be undertaken during electoral reviews by the Local Government Boundary Commission for England (‘LGBCE’):

**28. Principal councils should use their knowledge and awareness of local issues when deciding whether to undertake a review. However, principal councils should avoid starting a community governance review if a review of district, London borough or county council electoral arrangements is being, or is about to be, undertaken. Ideally, community governance reviews should be undertaken well in advance of such electoral reviews, so that the LGBCE in its review of local authority electoral arrangements can take into account any parish boundary changes that are made. The LGBCE can provide advice on its programme of electoral reviews.**

4.24. The LGBCE is currently carrying out an electoral review of Rushcliffe Borough Council for which consultation is ongoing and final recommendations are not expected until 1 March 2022. Details of the review are available on the LGBCE website<sup>8</sup>.

4.25. In circumstances in which:

- any CGR would be forced to conclude that the recommendations sought could not be made and therefore concerns raised by residents could not be addressed; and
- undertaking a CGR would be contrary to guidance as an electoral review is already ongoing,

proceeding with a CGR could be considered an unacceptable use of public funds. It could also potentially cause reputational harm by proceeding to undertake a review that has no prospect of making any of the petitioners’

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<sup>7</sup> Paragraph 12 to the Guidance

<sup>8</sup> [Rushcliffe | LGBCE Site](#)

recommendations. It is therefore not appropriate to proceed with a voluntary review in this case.

### Managing standards in local government

- 4.26. Whilst the concerns raised in the Petition do not relate to issues of community governance as envisaged in the 2007 Act, they do relate to potential matters of Councillor conduct and the actions of Bingham Town Council falling below the standards expected by parish electors.
- 4.27. Parish councils are required under Chapter 7 of the Localism Act 2011 to:
- Promote and maintain high standards of conduct by members;
  - Adopt an appropriate code of conduct;
  - Have regard to a failure of a member to comply with the code of conduct in deciding to take action and the nature of that action.
- 4.28. Bingham Town Council has been offered support in order to address the concerns around standards (including an open letter from the Monitoring Officer to all councillors in July 2020).
- 4.29. More recently, Rushcliffe Borough Council has engaged with the National Association of Local Councils (NALC) which has advised that it is developing a package of support for local councils which is likely to comprise of an independent peer review supported by NALC and the Local Government Association. This could result in an action plan being drawn up which could include support for the chairman and clerk over a 6-12 month period. It is strongly recommended that Bingham Town Council considers welcoming external peer support to work with the council over a period of time. This is a well-recognised tool in local government to support councils to operate in a highly effective and high performing manner to deliver the best services and outcomes for residents.

## **5. Alternative options considered and reasons for rejection**

- 5.1. *Accept Petition and undertake CGR* – The Council is unable to accept the Petition as valid as it does not comply with the requisite conditions under Section 80(4) of the 2007 Act.
- 5.2. *Reject Petition but undertake CGR* – Whilst the Council is empowered to undertake a CGR notwithstanding the validity of the Petition<sup>9</sup>, it is not considered appropriate in the circumstances in which:
- The Council is not aware of concerns relating to ward boundaries that could be addressed by a CGR;
  - A CGR cannot address the concerns raised by the Petition; and
  - An electoral review by the LGBCE remains ongoing.

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<sup>9</sup> Section 82, 2007 Act



## **6. Risks and uncertainties**

- 6.1. A failure to take any action to address concerns over the running of Bingham Town Council may have a reputational impact on Rushcliffe Borough Council. Whilst it should be acknowledged that Bingham Town Council is a democratically elected Council taking independent decisions, Rushcliffe may continue to offer what support it can to Bingham Town Council in order to best serve the local electors. This is set out in paragraph 4.29.
- 6.2. There is some risk of judicial review challenge to the Council's decision to reject the Petition. It is understood from taking independent legal advice that such a challenge has a low chance of success.
- 6.3. Undertaking a voluntary review (i.e. going against the recommendations) would be at a cost not budgeted for.

## **7. Implications**

### **7.1. Financial implications**

There are no direct financial implications arising from this report.

### **7.2. Legal implications**

The legal position in relation to this matter has been addressed in detail in the body of this report.

### **7.3. Equalities implications**

There are no equalities implications arising from this report.

### **7.4. Section 17 of the Crime and Disorder Act 1998 implications**

There are no crime and disorder implications arising from this report.

## **8. Link to Corporate Priorities**

Quality of Life	N/A
Efficient Services	N/A
Sustainable Growth	N/A
The Environment	N/A

## 9. Recommendation

It is RECOMMENDED that:

- a) the Council does not accept the Petition;
- b) the Council does not proceed to conduct a Community Governance Review of Bingham Town Council;
- c) the Council provides a response to the Petition organisers, indicating its reasons for rejection of the Petition;
- d) the Chief Executive writes to Bingham Town Council and Nottinghamshire County Council sharing the contents of this report and setting out what is agreed by Council; and
- e) the Council supports a commitment to working collaboratively with Bingham Town Council in response to any requests for support from the Town Council.

<b>For more information contact:</b>	Katherine Marriott Chief Executive 0115 914 8349 <a href="mailto:kmarriott@rushcliffe.gov.uk">kmarriott@rushcliffe.gov.uk</a>
<b>Background papers available for Inspection:</b>	Report to Cabinet 8 June 2021 'Petition: Community Governance Review'
<b>List of appendices:</b>	N/A