



## **Chief Executive Using Urgency Powers**

**26 November 2024**

### **Appointment of councillors to St Mary Hoo Parish Council**

Report from: Bhupinder Gill, Assistant Director, Legal & Governance

Author: Jane Ringham, Head of Elections & Member Services

#### **Summary**

This report seeks approval for an order under Section 91 of the Local Government Act 1972 to make temporary appointments of councillors to St Mary Hoo Parish Council so that it is quorate and able to lawfully transact the business of the Parish Council.

#### **1. Recommendation**

1.1 The Chief Executive, in consultation with the Leader of the Council and the Leader of the Conservative Group, is recommended to approve the making of an order under Section 91 of the Local Government Act 1972 to make the appointment of Councillors Field, Etheridge and Sands to St Mary Hoo Parish Council until such time as the Parish Council is able to coopt members and hold quorate meetings.

#### **2. Budget and policy framework**

2.1. There are minimal costs involved in the drawing up the necessary Order which can be met from within existing budgets in Legal & Governance directorate. Power to make temporary appointments to parish councils is a non-executive function. However, as the next Full Council meeting is not until 23 January 2025, to avoid a delay in the lawful transaction of business of the Parish Council and the implementation of a process of co-opting more permanent councillors, the Chief Executive is requested to use his urgency powers to approve the recommendation.

2.2. Where a proposed decision is a non-executive function, the Chief Executive and Directors shall have the power to act on behalf of the Council in cases of urgency, only where the urgent matter is of such a nature that it may be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council, in accordance with paragraph 4.1 of chapter 3, part 4 of the Constitution (employee delegation scheme). This is subject to consultation with the Leaders of all the groups which comprise at least 1/10th of the membership of the Council (or their nominees) and the provisions for

urgent decisions which are contrary to any plan or strategy which has been approved or adopted by the Council or which are contrary to or not wholly in accordance with the budget approved by the Council (set out in Chapter 4, Part 3 of the Constitution).

- 2.3. The Chief Executive, through the Assistant Director for Legal and Governance consulted with the Leader of the Council, Councillor Maple, and the Leader of the Conservative Group, Councillor Perfect on 22 November 2024. The Leader of the Independent Group was also consulted via email due to the nature of the matter under consideration on 25 November 2024.
- 2.4. Following the decision, the decision taker will provide a full report to the next available Council meeting (23 January 2025) explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

### 3. Background

- 3.1 The composition of St Mary Hoo Parish Council is five parish councillors. Between 18 and 24 October 2024 we were informed that four of the five parish councillors had resigned, including the Chairperson.
- 3.2 The statutory notices in respect of vacancies were published and displayed locally on parish noticeboards and on the parish council's website Under the Local Elections (Parishes and Communities) (England & Wales) Rules 2006, if ten or more local government electors within the St Mary Hoo parish request an election to fill the vacancies within 14 working days of the date of the notice, an election will be held. By the 14 day deadline on 13 November only three valid requests had been received.
- 3.3 The effect of these resignations is that the Parish Council is inquorate – with one remaining parish councillor – and unable to meet lawfully to transact the business of the Parish Council. The quorum for all parish councils is three, or one-third of the total membership of the parish council, whichever is the greater.
- 3.4 In the circumstances where there are so many vacancies in the office of parish councillors that the parish council is unable to act, the relevant principal authority may by order, under section 91 of the Local Government Act 1972, appoint persons to fill all or any of the vacancies until other councillors are elected and take up office.
- 3.5 The Act does not define “persons”, but conventionally other councils in similar circumstances include, as appointees, the local borough councillor(s) representing the ward in which the parish is located. Where additional persons are required, the Council has discretion as to whom it should appoint.
- 3.6 Following consultation with the political group leaders, it was felt that there remains only one parish councillor, it would be appropriate to consider making three temporary parish councillor appointments, bringing the total number to four, thereby making the parish council quorate again.

- 3.7 The political group leaders also proposed that, bearing in mind the political sensitivities of the area in which St Mary Hoo Parish Council is located, each political group should nominate a Councillor and therefore it is proposed that Councillors David Field, Gary Etheridge, and Ron Sands should be the appointed persons.
- 3.8 Councillors David Field, Gary Etheridge, and Ron Sands have been approached regarding their possible appointment and all have indicated their acceptance. Appointees do not have to make a declaration of acceptance of office.
- 3.9 It is proposed, in consultation with the remaining parish councillor and the Parish Clerk, that one of the first items of business once the Parish Council is quorate, will be to start a process of seeking nominees and approving persons for co-option on to the Parish Council. If a sufficient number of parish councillors are co-opted to form at least a quorum (three), the temporary appointments will terminate immediately upon the co-opted parish councillors taking office.

#### 4. Options

- 4.1. Option 1 - Do nothing, the Parish Council would continue to be unable to lawfully meet to transact its business, including the setting of a Parish precept for 2024-25.
- 4.2. Option 2 – Approve as requested, this will result in the Parish Council being quorate and able to lawfully meet to transact its business, including the process of co-opting parish councillors to replace the temporary appointments and the setting of a Parish precept for 2024-25.

#### 5. Advice and analysis

- 5.1. Refraining from exercising powers under Section 91 would leave the St Mary Hoo Parish Council inquorate and unable to meet to discharge its functions at least until the May 2027 Parish elections. There are several issues of concern to local residents that it is expected the Parish Council will consider and handle, including several controversial planning matters. Further if the Parish Council wish to set a precept, the principal council needs to be informed no later than 1 March 2025. This option is therefore not recommended.
- 5.2. The Chief Executive is recommended to use his emergency powers to appoint persons identified above to act as parish councillors under section 91, until such time as co-opted councillors are able to meet as a quorate parish council.
- 5.3. The contents of this report, and the recommended action do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access for protected groups. Therefore a Diversity Impact Assessment has not been undertaken.

## 6. Risk management

| <b>Risk</b>  | <b>Description</b>  | <b>Action to avoid or mitigate risk</b>                               | <b>Risk rating</b> |
|--|---|---|--------------------|
| Loss of reputation of Parish Council                         | Parish Council unable to transact business including submitting formal representations on planning matters and representing the views of local people | Use section 91 powers to appoint persons to act as parish councillors | CIII               |
| Inability to continue to run services or engage Parish Clerk | Parish Council unable to set a precept for 2024-25 to raise income to cover costs of services   | Use section 91 powers to appoint persons to act as parish councillors | CI                 |

| <b>Likelihood</b>                                 | <b>Impact:</b>   |
|---|--|
| A Very likely<br>B Likely<br>C Unlikely<br>D Rare | I Catastrophic<br>II Major<br>III Moderate<br>IV Minor |

## 7. Consultation

7.1. The Leader of the Council and Leader of the Conservative Group have been consulted as required by the Urgency provisions in the Constitution. In addition, due to the nature of the matter, the Leader of the Independent Group has also been included in the consultation.

## 8. Climate change implications

8.1. There are no direct climate change implications.

## 9. Financial implications

9.1. There are minimal costs involved in the drawing up the necessary Order which can be met from within existing budgets in Legal & Governance directorate.

## 10. Legal implications

- 10.1 Paragraph 12 of Part II of Schedule 12 to the 1972 Act states that: “...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...in no case shall the quorum be less than three”. Therefore, with only one parish councillor remaining, St Mary Hoo Parish Council is inquorate and currently unable to transact business at least until after the elections in May 2027.
- 10.2 The Council is empowered under Section 91 of the 1972 Act to make an order to appoint persons as parish councillors on a temporary basis to fill all or any of the vacancies until other councillors are elected and take up office.
- 10.3 There are no qualifying/disqualifying criteria for such appointments (for example as to whether an appointee must be an elector living in the relevant parish). As stated in paragraph 10.2 above, the 1972 Act specifically refers to ‘persons’, and there is no description as to who would qualify – so it is open to the Council who appoint whomever it considers appropriate. This could theoretically include officers; however, it would seem more appropriate to appoint councillors to the role and only consider officers as a last resort.
- 10.4 Under Section 91 (3) of the 1972 Act, we are required to send two copies of the order to the Secretary of State.

## 11. Decision by the Chief Executive

- 11.1. That the Chief Executive (using urgency powers), having consulted with the Leader of the Council, the Leader of the Conservative Group, and the Leader of the Independent Group, agrees the recommendation as detailed in section 1 of the report.

Richard Hicks, Chief Executive

27 November 2024

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Appendices

None

Background papers

None