



## COUNCIL

Wednesday 23 September 2020

### TEMPORARY APPOINTMENTS TO PARISH COUNCILS

#### EXECUTIVE SUMMARY

The purpose of this report is to seek the Council's approval to the making of Orders under s91 of the Local Government Act 1972, appointing persons temporarily to Knodishall Parish Council (KPC) and Sutton Parish Council (SPC).

Is the report Open or Exempt?	Open
<b>Wards Affected:</b>	Aldeburgh and Leiston, Deben
<b>Cabinet Member:</b>	Leader of the Council
<b>Supporting Officer:</b>	Hilary Slater Head of Legal and Democratic Services 01394 444336 <a href="mailto:hilary.slater@eastsoffolk.gov.uk">hilary.slater@eastsoffolk.gov.uk</a>

# 1 INTRODUCTION

- 1.1 S85 of the Local Government Act 1972 (LGA 1972) provides that councillors automatically vacate their office if they fail to attend meetings of the Council for six consecutive months, unless their absence is excused by way of a report to Council, before the six months' time limit is reached. In these circumstances, it is not the case that a councillor who vacates office is "sacked", "dismissed" or "removed" from office. Rather, if the absence is not excused, then, s85 applies automatically, and the councillor ceases to be a member of the Council as soon as the deadline is reached. The Council has to declare that the vacancy has arisen. It can then be advertised as a casual vacancy, in the usual way.
- 1.2 The actual wording of s85 of the LGA 1972 is as follows
- "(1)... if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority.
- (2) Attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, or who were appointed to advise the authority on any matter relating to the discharge of their functions, and attendance as representative of the authority at a meeting of any body of persons, shall be deemed for the purposes of subsection (1) above to be attendance at a meeting of the authority".
- 1.3 The LGA 1972 also provides that Council decisions have to be made by those present and voting, at a meeting. (For Parish Councils, see paragraphs 11-13 of Part 2 of Schedule 12 to the LGA 1972).
- 1.4 Due to the COVID-19 pandemic, and the ensuing lockdown, which began on 23 March 2020, local authorities were not able to meet in person. Therefore, the Government made the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No.392 (the Regulations), on 4 April 2020, which allowed Councils to meet remotely. Regulation 5 provided that being at remote meetings counted as "attendance" for the purposes of the six months' rule. No changes were made to s85 of the LGA 1972 to say that the six months' rule did not apply during the COVID-19 pandemic.
- 1.5 Without any Members in office, a quorum of Councillors does not exist, by which business can be carried out. It is noted and appreciated that Councillors who did not meet may have continued to work on their respective business, during the relevant six months period, via email, or telephone. Unfortunately, work via email or telephone does not count as "attendance" for the purposes of s85 of the LGA 1972.
- 1.6 The Suffolk Association of Local Councils (SALC) put information on their website and in their newsletters about remote meetings, and the need for Councils to continue to meet, to avoid the six months rule applying.

## **2 KNODISHALL PARISH COUNCIL (KPC) AND SUTTON PARISH COUNCIL (SPC)**

- 2.1 KPC have said that they did not hold any meetings, remotely or face to face, since 18 February 2020. KPC were due to have their monthly council meeting on 17 March but took the decision on the day to postpone it, as advice was starting to be issued regarding COVID-19, and the country went into lockdown shortly afterwards. KPC were unable to arrange remote meetings after that, mainly because several of their councillors were not email/internet users. Therefore, the members of KPC vacated office after 18 August 2020, due to their absence from meetings.
- 2.2 SPC have said that they did not hold any meetings, remotely or face to face, since 15 January 2020. With the arrival of the pandemic, SPC cancelled its meetings and followed Government guidelines, with Members working from home. Also, some Councillors needed to isolate for health reasons. SPC used email and telephone for business (see the comments in 1.5 above). Due to poor broadband connections and Members not having the necessary IT equipment, it was not possible for SPC to have remote meetings. None of the Members remembered the details of s85 of the LGA 1972 but SPC were due to have a meeting in September. In the meantime, a member of the public queried with the East Suffolk Council's (ESC) Monitoring Officer (MO) why it appeared from the SPC's website that they had not met since January 2020. When the MO made inquiries of the SPC, it transpired that they had not met since then, for the reasons set out above. Therefore, the members of SPC vacated their office due to their absence from meetings after 15 August 2020.

## **3 MAKING TEMPORARY APPOINTMENTS UNDER S91 OF THE LGA 1972**

- 3.1 Where there are "so many vacancies in the office of parish or community councillor that the parish or community council are unable to act", then, under s91 of the LGA 1972, "the district council may by order appoint persons to fill all or any of the vacancies until other councillors are elected and take up office". Any order made under s91 LGA 1972 must be copied to the Secretary of State.
- 3.2 There are no qualifications or criteria which have to be applied to those persons who wish to be appointed under s91 of the LGA 1972. The persons serve as councillors would, save that they have been appointed rather than elected. They serve until such time as the ESC makes a further Order under s39(4) of the Representation of the People Act 1983 (ROTPA), calling for an election to be held so that the seats on the Council may be filled on a permanent basis. Given the situation with COVID-19, these elections are likely to be held on 6 May 2021.
- 3.3 The use of s91 of the LGA 1972, and s39(4) of the ROTPA, are non- executive functions which have not been delegated to officers. Given that there are no serving Parish Councillors on KPC, or SPC, currently, there is a need for ESC to make temporary appointments under s91 of the LGA 1972.
- 3.4 KPC would like Nigel Black, Elizabeth Hayward, Jason Mayhew, John Read, Malcolm Smith, John Staff and Anthony Wigg appointed temporarily under s91 of the LGA 1972.
- 3.5 SPC would like Nigel Albertini, Susan Collins, Jacki Schafer and Alan McManus to be appointed temporarily under s91 of the LGA 1972.

#### **4 HOW DOES THIS RELATE TO THE EAST SUFFOLK STRATEGIC PLAN?**

- 4.1 Parish Councils form an important tier of local government, representing their communities at the most local level. They must have persons either elected or appointed, to carry out their business. By making temporary appointments to KPC and SPC, the ESC is enabling each Parish Council to function; and enabling its communities is one of the themes of the new Strategic Plan. Also, to make the necessary Orders under s39(4) of the ROTPA to allow for elections to take place in May 2021 will ensure that other persons take up the seats on KPC and SPC, on a permanent basis, at which point, the temporary appointments cease.

#### **5 FINANCIAL AND GOVERNANCE IMPLICATIONS**

- 5.1 Whilst KPC and SPC remain inquorate, they are unable to transact any business. Clearly, they need to have persons appointed to act temporarily, in order to carry out business, fulfil their statutory duties and to represent local interests.
- 5.2 If agreed by Council, Orders need to be made by ESC under the LGA 1972 Act, appointing persons on a temporary basis, until such time as other members are elected or co-opted to each Council. The names of persons to be appointed temporarily have been provided for each Council, and they are some of those who have served as elected Members, until their inadvertent vacation of office. Orders also need to be made by the ESC under s39(4) of the ROTPA, to allow for elections to take place to permanently fill the seats on both KPC and SPC.

#### **6 OTHER KEY ISSUES**

- 6.1 It is fundamental to both KPC and SPC that they have persons available to carry out their business, as set out above.

#### **7 OTHER OPTIONS CONSIDERED**

- 7.12 None. Not to use its powers under s91 of the Local Government Act 1972 and powers under s39(4) of the ROTPA is rejected for the reasons set out above.

#### **8 REASON FOR RECOMMENDATION**

- 8.1 To make temporary appointments to KPC and SPC so that each is quorate and can transact business. To make Orders under s39(4) of the ROTPA to hold the necessary elections to KPC and SPC, after which the temporary appointees to KPC and SPC will no longer serve.

#### **RECOMMENDATION**

That the Council approves;

1. the making of an Order under s91 of the Local Government Act 1972 to appoint temporarily the following persons to Knodishall Parish Council, namely, Nigel Black, Elizabeth Hayward, Jason Mayhew, John Read, Malcolm Smith, John Staff and Anthony Wigg.
2. the making of an Order under s91 of the Local Government Act 1972 to appoint temporarily the following persons to Sutton Parish Council, namely, Nigel Albertini, Susan Collins, Jacki Schafer and Alan McManus.

3. the subsequent making of an Order under s39(4) of the Representation of the People Act 1883 in respect of Knodishall Parish Council, calling for an election to be held as soon as possible, which is likely to be on 6 May 2021.
4. the subsequent making of an Order under s39(4) of the Representation of the People Act 1983 in respect of Sutton Parish Council, calling for an election to be held as soon as possible, which is likely to be on 6 May 2021.

**APPENDICES – None**

**BACKGROUND PAPERS – None**