

COUNCIL

26 NOVEMBER 2024

REPORT OF THE CHIEF EXECUTIVE

A.6 COMMUNITY GOVERNANCE REVIEW OF CLACTON-ON-SEA, HOLLAND-ON-SEA AND JAYWICK SANDS

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report seeks to provide the Council with the information requested at Full Council's last meeting (Minute 50 of 17 September 2024 refers) in respects of a possible community governance review of the unparished areas of the District. For completeness, at the last meeting, Council requested "*that proposals for a community governance review of Clacton-on-Sea, Holland-on-Sea and Jaywick be prepared and submitted to the next ordinary meeting of the Council to enable Council to determine whether to proceed with such a review, the timetable for a review and the resourcing of such a review.*"

EXECUTIVE SUMMARY

This report sets out proposals for Council to consider in respect of possible community governance review of Clacton-on-Sea, Holland-on-Sea and Jaywick Sands. These proposals are in the form of draft Terms of Reference for such a review (which themselves include a timetable for such a review) and possible costs to be incurred in undertaking such a review. If Council was minded to proceed with a community governance review there would need to be a recommendation to Cabinet to authorise the necessary expenditure to facilitate that review. This is set out as one of the recommendations in this report for consideration.

RECOMMENDATION(S)

It is recommended that Council;

- (a) considers whether it wishes to see a community governance review of Clacton-on-Sea, Holland-on-Sea and Jaywick Sands and, if it is so minded;**
- (b) subject to a decision on (a) above to proceed, to then determine the following:**
 - (i) that the draft Terms of Reference for the community governance review as set out at Appendix A be approved as the basis for that review;**
 - (ii) that the Chief Executive be authorised to adjust the Terms of Reference approved in (b)(i) to finally be published to reflect the current position as known on 1 July 2024 in relation to matters such as the 2025/26 Parish Precepts and consequential Band D Council Tax amount in each area of the District;**
 - (iii) subject to (iv) below, Cabinet be requested to include within the recommended budget for 2025/26 of the minimum sum of £48.4K to fund consultation and other expenses in respect of the community governance review and thereby authorise officers to incur expenditure to undertake the review following approval of the budget;**

(iv) that officers be requested to monitor the anticipated costs to deliver the review, including postage charges, to update likely cost of the review and to inform Cabinet to enable the sum in (c) above to be updated as necessary;

(c) that the terms of reference for the Community Leadership Overview and Scrutiny Committee be expanded, as set out in Appendix B, to include a reference power to consider and oversee community governance reviews and to submit a final recommendation to Council following the conclusion of the review (including any proposal to discontinue the review in any particular part of the review area based on responses received);

(d) approves the delegation of functions for community governance reviews, as set out in Table 1, within this report, to be included within Part 3(X), Schedule 2 Non-Executive functions for Full Council; and

(e) subject to (c) and (d) above, the Monitoring Officer be authorised to make the necessary changes to the Constitution to implement the Council's decision.

REASON(S) FOR THE RECOMMENDATION(S)

The recommendations are submitted pursuant to the decision of the Council on 17 September 2024 (Minutes 51 refers) to enable Council to consider proposals for a community governance review of Clacton-on-Sea, Holland-on-Sea and Jaywick Sands, the timetabling of such a review and its resourcing. Should the Council determine to proceed with a community governance review of that area the remaining recommendations seek to provide mechanisms for the review to be delivered. This would include allocating an existing Committee of the Council with the opportunity to oversee the review and act as the conduit for recommendations to be submitted to Council (in due course).

ALTERNATIVE OPTIONS CONSIDERED

Council requested the proposals be submitted to the Council. As such, to not submit the proposals would go against a decision of the Council. On this basis it was discounted.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Corporate Plan 2024-28 has, at its heart, Community Leadership with the commitment that the Council will listen and for our residents and businesses. The community governance arrangements for the communities of Clacton-on-Sea, Holland-on-Sea and Jaywick Sands are critical going forward. With the potential for local government re-organisation it is vital that those communities have the chance to determine the extent to which they require and can benefit from dedicated local voices to represent their interests. Like the Parish and Town Councils of Brightlingsea, Frinton & Walton, Harwich, Manningree and others any new Local Council(s) would be integral partners with the principal Councils for the area to work with and deliver for the residents and businesses in those areas.

OUTCOME OF CONSULTATION AND ENGAGEMENT (including with the relevant Overview and Scrutiny Committee and other stakeholders where the item concerns proposals relating to the Budget and Policy Framework)

Both the Essex Association of Local Councils and the Tendring District Association of Local Councils have been advised on the intention for Council, at this meeting, to consider whether to initiate a Community Governance Review of Clacton-on-Sea, Holland-on-Sea and Jaywick Sands.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision (see the criteria stated here)	YES/NO	If Yes, indicate which by which criteria it is a Key Decision	Although not a Key Decision, as it is a non-Executive Matter being taken by Council, it is nevertheless important to record that the potential decision would meet the following criteria: <input checked="" type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input checked="" type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	Notice of the proposal was given through the motion approved by Council on 17 September 2024. It was then formally added to the published list of forthcoming decisions on 31 October 2024

The legal framework under which the proposals for a community governance review of Clacton-on-Sea, Holland-on-Sea and Jaywick Sands has been prepared is set out in the Local Government and Public Involvement in Health Act 2007. As the name of the Act implies, it is wide ranging in terms of its provisions. Part 4 of the 2007 Act sets out those provisions related to parishes and community governance reviews. It was through this Act that principal authorities such as this Council (for the District of Tendring), has the power to determine such matters as whether to parish an area, to amend parish areas, to change electoral arrangements for parish councils and to remove moribund parishes following a process defined as a community governance review.

A community governance review can be instigated by the relevant principal council (this Council) or otherwise in response to a community governance petition. In the case of the proposed review area of Clacton-on-Sea, Holland-on-Sea and Jaywick Sands (with an electorate of over 45,000) the petition would need to be signed by approximately 3,380 electors. However, if the petitioners wished to only address one of the three identified areas the number of petitioners would need to be approximately as below:

Clacton-on-Sea – with almost 34,000 electors – the petition would need to be signed by over 2,500 electors from that area.

Holland-on-Sea – with almost 7,300 electors – the petition would need to be signed by over 500 electors from that area.

Jaywick Sands – with over 4,200 electors – the petition would need to be signed by over 300 electors from that area.

In this case, the Council is being invited to approve a community governance review without a petition requiring it. As referenced above, this is a power it has.

In undertaking community governance reviews, principal councils are required, by section 100(4) of the 2007 Act, to have regard to this guidance which is issued by the Secretary of State, under section 100(1) and (3), and the LGBCE under section 100(2) of the same Act. Due regard has been given to that guidance in the preparation of this report. The full guidance is available through the link later in this report.

The Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended), within Regulation 2(1) and Schedule 1 prescribes those “FUNCTIONS NOT TO BE THE RESPONSIBILITY OF AN AUTHORITY’S EXECUTIVE” therefore retaining community governance review functions to Council or a Committee of Council (EB (1) 1 to 9).

Tendring District Council within its Constitution (Part 3.9) has not delegated its functions to a committee and therefore rests with Full Council, however due to the practicalities and operational requirements of overseeing a community governance review, it is recommended that either a new committee be established or the terms of reference of one of the existing committees can be extended to cover these functions.

Section 9F of the Local Government 2000 (as amended) made the provisions for Overview and Scrutiny Committees and their functions

- (2) Executive arrangements by a local authority must ensure that its overview and scrutiny committee has power (or its overview and scrutiny committees, and any joint overview and scrutiny committees, have power between them)—
- (c) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive,
- (d) to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive,
- (e) to make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area.

The Community Leadership Overview and Scrutiny Committee’s current Terms of Reference (Part 2.13) include performing the role of Overview and Scrutiny and its functions (amongst others) in relation to:

- Community Leadership developing the external focus of overview and scrutiny on “district-wide” issues’ (and where appropriate sub regional, regional and national issues), in particular through collaborative work with local partner authorities, providers, stakeholders and members of the public.
- Community engagement, development and empowerment

Should Council resolve to extend the role of Community Leadership Overview and Scrutiny Committee to delegate some of it’s the functions relating to community governance reviews, consequential amendments to the Constitution will be necessary. **Part 3 Schedule 2 - Responsibility for Council (Non-Executive) Functions** will need to record the delegation of functions, as set out in **Table No. 1** below, and the **Terms of Reference for the Community Leadership Overview and Scrutiny Committee** would be required, as set in **Appendix B**.

Part 3 Schedule 2 - Responsibility for Council (Non-Executive) Functions

Functions relating to community governance reviews	Sections of Part 4 of the Local Government and Public Involvement in Health Act 2007	Functions being retained by Council, or delegated to Community Leadership Overview & Scrutiny Committee (CL OSC) or the Chief Executive (CX)
Duties relating to community governance reviews.	Section 79	Council
Functions relating to community governance petitions.	Sections 80, 83 to 85	Council
Functions relating to terms of reference of review.	Sections 81(4) to (6)	Council
Power to undertake a community governance review.	Section 82	Council
Functions relating to making of recommendations.	Sections 87 to 92	CL OSC to provide recommendation on sections 87 to 92 to Council
Duties when undertaking review.	Section 93 to 95	CX
Duty to publicise outcome of review.	Section 96	CX
Duty to send two copies of order to Secretary of State and Electoral Commission.	Section 98(1)	CX
Power to make agreements about incidental matters.	Section 99	CL OSC to provide recommendation on section 99 to Council

X The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:

Article 15.02 (b) provides the Monitoring Officer with authority to make minor changes to the Constitution arising from decisions of the Council, should the Council approve the recommendation to extend the terms of reference of Community Leadership Overview and Scrutiny Committee.

FINANCE AND OTHER RESOURCE IMPLICATIONS

The cost of undertaking the review is estimated at £48,400 (as the minimum) divided almost equally over the two major stages of consultation set out in Appendix A to this report. The main element of the costs relates to written communication with 27,000 households in the review area on two separate occasions as we initially invite views and then set out one or more options in detail and request feedback. Allowing for business reply responses from households in the review area amount, across both consultations, to approximately £40,100. The remaining sum from the £48,400 referred to would provide funding for public meetings and advertisement costs (including digital and paper based) to bring the consultation to the attention of electors and other stakeholders. Prior to the start of the community governance

review, we would seek to identify tenant, resident, community and business groups to be advised/consulted in addition to electors.

These costs have been determined in autumn 2024, and in view of the costs associated with Royal Mail (or downstream access) could vary prior to commencement of the review there will need to be monitoring of the position and adjustment of the final sum included (if Council determines to proceed with it). One of the recommendations seeks to address this point.

The review (as set out in the draft terms of reference at Appendix A) would be timed to be undertaken in 2025/26. As such, the intention would be to recommend to Cabinet to make the necessary provision for the review (if approved) in the budget for 2025/26.

The staff resource to undertake the various tasks necessary to achieve the steps summarised in the draft terms of reference for this review have still to be fully assessed. It is envisaged that several service areas within the Governance Directorate will be called upon to undertake those tasks. Some consideration has been given to commissioning a third party to undertake some or many of the required tasks. To explore this further, an approach has been made to one external business who have experience of supporting Councils in delivering community governance reviews. However, the business does not have the capacity to provide significant support to this review. Clearly, any external resource would need to be procured following the Council's procurement rules and this would require an appropriate budget to be identified. Should Council approve a community governance review for Clacton-on-Sea, Holland-on-Sea and Jaywick Sands, the assessment of the staff resource and any further investigations in respect of outsourcing elements of the work involved would be reported to Cabinet for consideration as it considers the resourcing of the review.

X	The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:
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No other comments not otherwise referenced in this report. Due consideration of the funding requirement for a community governance review will take place if Council approve the recommendations set out.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Through early identification of the likely one off costs of undertaking a community governance review, this report seeks to support financial sustainability.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Through the various sections of this report and the Appendix attached it is intended that the relevant facts are presented to Council to inform good decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The report (and the appendix) set out the requirements and powers in respect of conducting a community governance review. The anticipated resourcing to undertake a review that acknowledges and adheres to those duties and appropriately use the powers are also set out.

MILESTONES AND DELIVERY	
The submission of this report seeks to achieve the milestone set by Council on 17 September to enable this meeting of Council to consider whether to proceed with a community governance review (having received proposals for such a review).	
ASSOCIATED RISKS AND MITIGATION	
The principal risk Council's attention is drawn to is that it does not undertake a community governance review in accordance with the duties and appropriate use of powers set out in the Local Government and Public Involvement in Health Act 2007 having had regard to the statutory guidance issued by the Secretary of State and the Local Government Boundary Commission for England. This report and the attached draft Terms of Reference seek to militate against that risk.	
EQUALITY IMPLICATIONS	
In preparing this report, due consideration has been given to the Council's statutory Equality Duty, as set out in Section 149(1) of the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:	
<ul style="list-style-type: none"> eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act); advance equality of opportunity between people who share a relevant characteristic and people who do not; foster good relations between people who share a protected characteristic and people who do not. 	
SOCIAL VALUE CONSIDERATIONS	
There are no direct implications for the Council in respect of social value.	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030	
There are no direct implications for the Council in respect of its net zero policy.	
OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
Crime and Disorder	There are no direct implications for the Council in respect of these considerations.
Health Inequalities	
Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)	
Area or Ward affected	<p>In Clacton-on-Sea - Bluehouse Ward, Burrsville Ward, Cann Hall Ward, Coppins Ward, Pier Ward, St James Ward, St John's Ward and St Paul's Ward</p> <p>In Holland-on-Sea - St Bartholomews Ward and Eastcliff Ward</p> <p>In Jaywick Sands - West Clacton & Jaywick Sands Ward</p>

PART 3 – SUPPORTING INFORMATION

BACKGROUND

By way of background to this report, Council is reminded of the following motion approved at its meeting on 17 September 2024 (Minute 50 refers):

“That Full Council -

(1) notes that:

- a. Parish and Town Councils are an established and valued form of local democracy with an important role to play in both rural, and urban, areas.*
- b. the District currently has 27 Town and Parish Councils with a cumulative electorate of almost 75,000 and that Clacton-on-Sea, Holland-on-Sea and Jaywick are not currently parished and the cumulative electorate for those areas is almost 45,000. As such, about 62% of residents have one of 27 Town and Parish Councils to represent them and their interests at a very local level. 38% of the District’s residents do not have that representation.*
- c. between 1891 and 1974, Great Clacton (later renamed Clacton as it also covered Clacton-on-Sea) had its own specific tier of local government, and the area of this tier of local government was expanded in 1934 to take in the then former parish of Little Holland (later renamed Holland-on-Sea).*
- d. since 1974, with the abolition of Clacton Urban District Council and creation of this District Council, there has been no distinct Local Council representation for specifically Clacton-on-Sea, Holland-on-Sea and Jaywick.*
- e. it has been more than 25 years since the electors of Jaywick Sands last had the chance to express their view on the issue of a parish for that Town.*
- f. the nature/responsibilities of local government has changed over the years and, in recent years, there has been a distinct impetus to devolve power from Whitehall to local councils and communities that will further change that landscape.*
- g. the Local Government and Public Involvement in Health Act 2007 devolved the power to take decisions about matters such as the creation of parishes and their electoral arrangements to the District Council for its area, through a process called a community governance review which has, at its heart, engagement with local people in the defined review area and that representations received in connection with the review are taken into by the District Council.*

(2) requests that proposals for a community governance review of Clacton-on-Sea, Holland-on-Sea and Jaywick be prepared and submitted to the next ordinary meeting of the Council to enable Council to determine whether to proceed with such a review, the timetable for a review and the resourcing of such a review.”

Through this report and its appendices, it is hoped that the necessary information has been provided to enable the Council to reach a decision as to whether to proceed with the community governance review concerned.

The draft terms of reference includes the following text:

“The District Council would expect there to be a minimum number of responses from the population to trigger a draft recommendation for parish arrangements to be made in the review area. This number would be 5% of the electors involved. A greater level of support would be expected for such a draft recommendation to be made a final recommendation.

If more than one option is supported at the draft or final recommendation stage then the support from the local electorate for those options will be measured against one another to determine whether the trigger point has been achieved.”

The reference to minimum levels of support are not explicitly referenced in the 2007 Act or the statutory guidance mentioned in this report. However, they are included as a means of reassurance to the public that this whole exercise has not simply been predetermined and their say on this matter is important.

PREVIOUS RELEVANT DECISIONS

Council on 17 September (Minute 50 refers) requested the submission of proposals for a Community Governance Review to enable Council to determine whether to proceed with such a review.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

The joint statutory guidance issued by Government and the Local Government Boundary Commission for England in respect of community governance reviews under the 2007 Act is available here–

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8312/1527635.pdf

APPENDICES

A – Draft Terms of Reference for the possible Community Governance Review of Clacton-on-Sea, Holland-on-Sea and Jaywick Sands

B – Proposed Amendment to the Community Leadership Overview and Scrutiny Committee Terms of Reference.

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