Executive Summary

The Council agreed on 9 December 2014 to conduct a community governance review of the Chilworth area within the parishes of Shalford and St. Martha. The Council also agreed the terms of reference of that review, which included an initial three month consultation on the following three options:

Option 1: To create a new parish by merging the existing Chilworth ward of Shalford Parish with the whole of the existing St. Martha Parish and create a new Parish Council covering the merged area.

Option 2: To merge the existing parishes of Shalford and St. Martha and create a new parish council covering the merged area.

Option 3: To make no change to the current arrangements.

That consultation ended on Monday 30 March 2015. Towards the end of the consultation period, the Council received a letter from a local resident of Chilworth contending that the community governance petition, which triggered the review, was invalid due to an insufficient number of signatories, and that the review process should cease immediately until such time as a valid petition is submitted.

The Council has taken independent legal advice on this matter, the conclusion of which was that it could be argued that the petition was invalid on the basis of insufficient signatories, meaning that it could also be argued that the Council was wrong to believe that it was obliged to conduct a review. Its decision on 9 December 2014 to carry out the review was therefore flawed.

This report sets out the current position with the review and the options now open to the Council to consider in terms of the way forward.
Recommendation:

That the Council determines, having regard to the relevant statutory guidance¹, to continue with the current process for the community governance review of the Chilworth area, in accordance with the terms of reference approved on 9 December 2014, on the basis of its discretionary powers available under Section 82 of the Local Government and Public Involvement in Health Act 2007.

Reason for Recommendation:
To review the position to date and to decide whether to proceed with the community governance review.

1. **Purpose of Report**

1.1 To ask the Council to consider its position in respect of continuing with the community governance review of the Chilworth area following receipt of a letter during the initial consultation questioning the legality of the process due to the alleged invalidity of the community governance petition which triggered the review.

2. **Background**

2.1 A community governance review is a review of one or more areas of the borough to look at one or more of the following:

- Creating, merging, altering or abolishing parishes;
- The naming of a parish and the style of a new parish (i.e. whether to call it a “village”, “community” or “neighbourhood” with the council similarly named as a “village council”, “community council” or “neighbourhood council”);
- The electoral arrangements for parishes (including council size, the number of councillors to be elected to the council, and parish warding), and
- Grouping parishes under a common parish council or de-grouping parishes

2.2 The village of Chilworth is currently located within two parishes – part in Shalford and part in St. Martha. A group known as Chilworth2gether submitted a community governance petition to the Council on 29 September 2014, purportedly signed by 297 electors of the area. On 9 October 2014, following verification of the signatories against the electoral register, the Council confirmed that 260 electors had signed the petition - 177 from the Chilworth ward of Shalford Parish and 83 from St. Martha Parish, which was deemed, at the time, sufficient to trigger a community governance review.

2.3 The petition stated:

> “We the undersigned would like the village of Chilworth (as shown on the map attached) to be united as a community with one new parish council comprising the current Chilworth ward of Shalford Parish Council and the whole of the St.

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2.4 On 9 December 2014, the Council considered a report on this matter and agreed to conduct a community governance review of the Chilworth area. The Council also agreed the terms of reference for the review, which included an initial three-month consultation on the following three options:

Option 1: To create a new parish by merging the existing Chilworth ward of Shalford Parish with the whole of the existing St. Martha Parish and create a new Parish Council covering the merged area (the option put forward in the petition).

Option 2: To merge the existing parishes of Shalford and St. Martha and create a new parish council covering the merged area.

Option 3: To make no change to the current arrangements.

2.5 The Council also agreed that the area under review\(^2\) within the terms of reference should encompass the whole of the two parishes of Shalford and St Martha as Options 1 and 2 clearly affect both parishes. We therefore sent consultation letters to all 3,837 local government electors of both parishes asking them to indicate their preference for one of the three options.

2.6 The initial consultation commenced on 5 January 2015 when we published the terms of reference, and concluded on 30 March 2015. The timetable published in the terms of reference envisages a report back to the Council in July 2015 to receive details of outcome of the initial consultation and to consider draft recommendations.

2.7 The deadline for submission of responses to the initial consultation was 5pm on Monday 30 March 2015. As at that time, the Council had received a total of 438 responses, which break down (in summary) as follows:

<table>
<thead>
<tr>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
</tr>
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<tbody>
<tr>
<td>240</td>
<td>10</td>
<td>188</td>
</tr>
</tbody>
</table>

3. CLAIMED INVALIDITY OF THE COMMUNITY GOVERNANCE PETITION

3.1 Towards the end of the consultation period, the Council received a letter from a local resident of Chilworth contending that the community governance petition, which triggered the review, was invalid due to an insufficient number of signatories, and that the review process should cease immediately until such time as a valid petition is submitted.

3.2 The 2007 Act provides in Section 80 (3) (b) that if the petition area has between 500 and 2,500 local government electors, the community governance petition must be signed by at least 250 of those electors, but Section 80 (3) (c) provides

\(^2\) Section 102 (2) of The Local Government and Public Involvement in Health Act ("the 2007 Act") defines the "area under review" as being "…however much of the area of a principal council is subject to the review".
that where the petition area has more than 2,500 electors, the petition must be signed by at least 10% of the electors.

3.3 The basis upon which this contention was made is that given the impact that Options 1 or 2 would have on the existing parishes, the petition area should have encompassed the whole of both parishes rather than the area specifically related to the village of Chilworth – i.e. the Chilworth ward of Shalford parish and St. Martha parish. The resident claims that the petition was invalid as the petition organisers should have obtained 10% of the total electorate for both parishes in accordance with Section 80 (3) (c) – i.e. 384 valid signatures – in order to compel the Council to undertake a community governance review.

4. **LEGAL ADVICE**

4.1 Since the receipt of the letter, and given the lack of clarity in respect of the legislation, we have sought Counsel’s advice on the matter.

4.2 Counsel notes that it is unclear whether the “petition area” could be different from the “area under review”. There is no known judicial decision in which the meaning of “petition area” has been considered. The legislation is vague and open-ended meaning that if the objection is correct there may well be an arguable case. Equally, there are factors supporting the review process. The discretion whether or not to carry out a community governance review under section 82 of the Act having regard to the guidance and arguments for and against the carrying out of a review, in this regard the following:

1) The statutory guidance, with reference to paragraphs 15,16, 24-31 (reproduced at Appendix 1 to this report);

2) The process has been embarked upon;

3) The position in law is unclear;

4) The progress to date;

5) The responses received;

6) Sums/resources expended;

7) The legislative Reform (Community Governance Reviews) Order 2015, made on 26 March 2015, came into effect 27 March 2015. This new legislation lowers the petition thresholds, clearly demonstrating the intention of the legislation is to make the process easier to invoke.

4.3 With effect from 27 March 2015, the requirements in Section 80 (3) of the 2007 Act have been altered by the 2015 Order. The relevant thresholds for community governance petitions to be deemed valid are now as follows:

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3 defined in Section 102 (2) of the 2007 Act as being *the area to which a community governance petition relates.*
• If the petition area has fewer than 500 local government electors, the petition must be signed by at least 37.5% of the electors
• If the petition area has between 500 and 2,500 local government electors, the petition must be signed by at least 187 of the electors
• If the petition area has more than 2,500 local government electors, the petition must be signed by at least 7.5% of the electors

4.4 These thresholds will apply to any community governance petition submitted in the future.

5. Financial Implications

5.1 As reported to Council on 9 December 2014, there will be a financial cost in conducting the community governance review, particularly in respect of the consultation process. Part of the cost, in respect of the initial consultation on the terms of reference (£6,300), fell in the 2014-15 financial year, for which there was no specific budget, but those costs were met from within existing budgets. The costs associated with any consultation on the draft recommendations will fall in the 2015-16 financial year, provision for which was made in the revenue budget.

5.2 Additional staffing resources within Democratic Services are being put into place to meet ongoing commitments in respect of governance related work over the next 12 months. These costs are as set out below:

<table>
<thead>
<tr>
<th></th>
<th>2014-15</th>
<th>2015-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staffing costs</td>
<td>£800</td>
<td>£2,000</td>
</tr>
<tr>
<td>Consultation costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• printing</td>
<td>£4,300</td>
<td>£4,300</td>
</tr>
<tr>
<td>• postage</td>
<td>£2,000</td>
<td>£2,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£7,100</strong></td>
<td><strong>£8,300</strong></td>
</tr>
</tbody>
</table>

6. Legal Implications

6.1 The 2007 Act gave principal councils responsibility for undertaking community governance reviews. Where a valid community governance petition is submitted requesting a community governance review, the authority must carry out such a review. If in fact a petition is not valid, discretionary powers conferred by Section 82 of the Local Government and Public Involvement in Health Act 2007 are available having regard to the guidance and the arguments for and against carrying out the review. A community governance review must have regard to relevant statutory guidance. Whilst the 2007 Act and the guidance stipulate how a community governance review is to be carried out, they are not precise in defining the “petition area” and are silent on how to interpret consultee responses.

6.2 In addition, case law surrounding community governance reviews is minimal and focuses on the statutory framework for undertaking the consultation. The 2007 Act does, however, require the Council to take into account any responses received and stipulates that we must have regard to the need to secure the community governance within the area under review reflects the identities and interests of the community in that area and that it is effective and convenient.
6.3 The relevance of the public sector equality duty to the recommendation in this report is considered to be negligible and the recommendation is not expected to have any disproportionate impact on people with protected characteristics under equalities legislation.

7. Human Resource Implications

7.1 There are no direct human resource implications arising from this report.

8. Conclusion

8.1 The issue raised by the local resident over the validity of the community governance petition (if correct), essentially questions the vires of the Council’s decision to conduct a community governance review, and has highlighted the lack of clarity in the 2007 Act.

8.2 Counsel’s advice is, however, clear in that, if the objection is correct, the petition may not be a valid petition and so Council must now decide as to whether or not it wishes to continue with the community governance review on the basis of the discretionary powers conferred by Section 82 of the 2007 Act.

9. Background Papers


10. Appendices

Appendix 1

Extract from Section 2 of “Guidance on Community Governance Reviews” – DCLG and Local Government Boundary Commission for England (March 2010)

Undertaking community governance reviews

15. In many cases making changes to the boundaries of existing parishes, rather than creating an entirely new parish, will be sufficient to ensure that community governance arrangements continue to reflect local identities and facilitate effective and convenient local government. For example, over time communities may expand with new housing developments. This can often lead to existing parish boundaries becoming anomalous as new houses are built across the boundaries resulting in people being in different parishes from their neighbours. In such circumstances, the council should consider undertaking a community governance review, the terms of reference of which should include consideration of the boundaries of existing parishes.

16. A community governance review offers an opportunity to put in place strong, clearly defined boundaries, tied to firm ground features, and remove the many anomalous parish boundaries that exist in England. Reviews also offer the chance to principal councils to consider the future of what may have become redundant or moribund parishes, often the result of an insufficient number of local electors within the area who are willing to serve on a parish council. Some of these issues are considered elsewhere in this guidance (see Chapter 3 about parish councils and parish meetings and Chapter 4 regarding grouping parishes and dissolving parish councils and abolishing parishes).

24. A principal council is under a duty to carry out a community governance review if it receives a valid community governance petition for the whole or part of the council’s area. However, the duty to conduct a review does not apply if:

   a) the principal council has concluded a community governance review within the last two years which in its opinion covered the whole or a significant part of the area of the petition or
   b) the council is currently conducting a review of the whole, or a significant part of the area to which the petition relates

25. Where a review has been conducted within the last two years the principal council still has the power to undertake another review if it so wishes. Where a review is ongoing, the council can choose to modify the terms of reference of the ongoing review to include the matters within the petition, or to conduct a second review.

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.

27. In the interests of effective governance, the principal council should consider the benefits of undertaking a review of the whole of its area in one go, rather than carrying out small scale reviews in a piecemeal fashion of two or three areas. However, it is recognised that a full-scale review will not always be warranted, particularly where a review of the whole area or a significant part of the principal council’s area has been carried out within the last
few years. Occasionally, it may be appropriate to carry out a smaller review, for example, to adjust minor parish boundary anomalies.

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.

29. Where the LGBCE bases its new district or London borough ward boundaries on parish boundaries the Parliamentary Boundary Commission will then use these boundaries to determine parliamentary constituency boundaries (parliamentary constituencies use district and London borough wards as their building blocks). This illustrates the importance of keeping parish boundaries under review and ensuring they accurately reflect local communities.

30. Reorganisation of community governance orders (explained further in this chapter under implementation) creating new parishes, abolishing parishes or altering their area can be made at any time following a review. However for administrative and financial purposes (such as setting up the parish council and arranging its first precept), the order should take effect on the 1 April following the date on which it is made. Electoral arrangements for a new or existing parish council will come into force at the first elections to the parish council following the reorganisation order. However, orders should be made sufficiently far in advance to allow preparations for the conduct of those elections to be made. In relation to a new parish council, the principal council may wish to consider whether, during the period between 1 April and the first elections to the parish council, it should make interim arrangements for the parish to be represented by councillors who sit on the principal council.

31. Parish council elections should normally take place every four years at the same time as the elections for the district or London borough ward or, in areas outside of London which have no district council, the county division in which a parish, or part of a parish, is situated. However, where a new parish is to be created, it may be necessary to alter the date of the next parish election, particularly if the next elections to the ward or division are not scheduled to take place for some time. To achieve this, section 98 of the 2007 Act allows principal councils to modify or exclude the application of sections 16(3) and 90 of the Local Government Act 1972, so that the first election to the new parish council is held in an earlier year. This results in councillors serving either a shortened or lengthened first term to allow the parish council’s electoral cycle to return to that of the unitary, district or London borough ward at the next election.