

Case No:
CO/2646/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT AT MANCHESTER

Neutral Citation Number: EWHC 2247 (Admin)

Manchester Civil Justice Centre

24 August 2011

Before :

His Honour Judge Raynor QC sitting as a judge of the High Court

Between :

The Queen on the application of
OFFERTON PARK PARISH COUNCIL

Claimant

- and -

STOCKPORT METROPOLITAN BOROUGH
COUNCIL

Defendant

Mr Robert Palmer (instructed by Brabners Chaffe Street LLP) for the Claimant

Mr Andrew Arden QC and Mr Justin Bates (instructed by Stockport Council) for the
Defendant

APPROVED JUDGMENT

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

JUDGE RAYNOR QC

JUDGE RAYNOR QC

Introduction

1. This is my judgment following the “rolled-up” hearing of the Claimant’s application for judicial review of the Metropolitan Borough of Stockport (Reorganisation of Community Governance: Offerton Park) Order 2011 made on 15 February 2011. That Order purported to abolish the parish council for the parish of Offerton Park and the parish itself and was expressed to come into force on 31 March 2011. However pursuant to an order of Mr Justice Owen dated 30 March 2011 the Order is suspended.

2. The Order was made pursuant to a resolution of the Defendant on 20 January 2011 to give effect to the recommendations of a Community Governance Review Committee meeting which had taken place on 26 October 2010 following a community governance review under the Local Government and Public Involvement in Health Act 2007 (“the Act”).

The Statutory Framework

3. Parish and town councils are the most local tier of government in England and in a White Paper published in 2006 the Government made clear its commitment to them. As will be seen, consistently with this commitment, the Secretary of State’s Guidance on Community Governance reviews is strongly supportive of parish councils, recognising the role that they can play in terms of community empowerment at local level.

4. Community governance reviews are undertaken pursuant to statutory provisions contained in the Act:
 - (a) by section 83 of the Act, a local authority is obliged to undertake a community governance review containing terms of reference allowing for the petition to be considered if a community governance petition under section 80 of the Act is received signed by the requisite minimum number of local government electors and the authority is not

in the course of undertaking a review and has not concluded a previous review within a two year period.

(b) Section 88 of the Act contains provisions applying where existing parishes are under review. Sub-section (1) to (4) provide as follows:

- (1) A community governance review must make the following recommendations in relation to each of the existing parishes under review (if any).
- (2) The review must make one of the following recommendations-
 - (a) recommendations that the parish should not be abolished and that its area should not be altered;
 - (b) recommendations that the area of the parish should be altered;
 - (c) recommendations that the parish should be abolished.
- (3) The review must make recommendations as to whether or not the name of the parish should be changed.
- (4) The review must make one of the following recommendations-
 - (a) if the parish does not have a council: recommendations as to whether or not the parish should have a council;
 - (b) if the parish has a council: recommendations as to whether or not the parish should continue to have a council.

Plainly sections 88(3), 88(4)(a) and (b) will not apply if the review recommends the abolition of the parish.

(c) Subject to compliance with the duties set out in section 93 of the Act, it is for the principal council (in this case the Defendant) to decide how to undertake the review. Sections 93(3) to (6) provide as follows:

- (3) The principal council must consult the following-
 - (a) the local government electors for the area under review;
 - (b) any other person or body (including a local authority) which appears to the principal council to have an interest in the review.
- (4) The principal council must have regard to the need to secure that community governance within the area under review-
 - (a) reflect the identities and interests of the community in that area, and
 - (b) is effective and convenient

- (5) In deciding what recommendations to make, the principal council must take into account any other arrangements (apart from those relating to parishes and their institutions)-
 - (a) that have already been made, or
 - (b) that could be made
 for the purposes of community representation or community engagement in respect of the area under review
 - (6) The principal council must take into account any representations received in connection with the review
- (d) By virtue of section 100 of the Act, the Secretary of State may issue guidance about undertaking community governance reviews, and section 100(4) of the Act provides that a principal council “must have regard to guidance issued under this section”.
5. Guidance under section 100 of the Act was issued in March 2010 and, as stated, that guidance is strongly supportive of parish councils:
- (a) Paragraph 45 of the Guidance states that parish councils are “an established and valued form of neighbourhood democracy and management” and [the Government] proposed “to build on the existing parish structure, so as to improve its capacity to deliver better services and represent the community’s interests”
 - (b) Paragraph 47 states:

“47. An important aspect to approaching sustainable communities is allowing local people a say in the way their neighbourhoods are managed. One of the characteristics of a sustainable community is the desire for a community to be well run with effective and inclusive participation, representation and leadership. This means:

 - a) representative, accountable governance systems which both facilitate strategic, visionary leadership and enable inclusive, active and effective participation by individuals and organisations;
 - and
 - b) effective engagement with the community at neighbourhood level including capacity building to develop the community’s skills, knowledge and confidence;”
 - (c) Paragraph 50 states that parish councils continue to have two main roles: community representation and local administration, the views of local communities and inhabitants being of central importance.

(d) Paragraphs 55 and 57 state that parish councils have an important role to play in the development of their local communities and “can perform a central role in community leadership”.

(e) Paragraphs 136 and 137 (entitled “Other (non-parish) forms of community governance”) state as follows:

136. In conducting a community governance review, principal councils must consider other forms of community governance as alternatives or stages towards establishing parish councils. Section 93(5) of the 2007 Act states that ‘In deciding what recommendations to make [in the community governance review] the principal council must take into account any other arrangements...that have already been made or that could be made for the purposes of community representation or community engagement in respect of the area under review’. The following paragraphs consider other types of viable community representation which may be more appropriate to some areas than parish councils, or may provide stages building towards the creation of a parish council. There is sometimes evidence locally of an existing community governance infrastructure and of good practice which are successfully creating opportunities for engagement, empowerment and co-ordination in local communities.

137. However, what sets parish councils apart from other kinds of governance is the fact that they are a democratically elected tier of local government, independent of other council tiers and budgets, and possess specific powers. This is an important distinction to make. Parish councils are the foundation stones for other levels of local government in England. Their directly elected parish councillors represent local communities in a way that other bodies, however worthy, cannot since such organisations do not have representatives directly elected to those bodies.

(f) Paragraphs 117 to 124 contain guidance as regards “Abolishing parishes, and dissolving parish councils”. Paragraphs 117 to 121 state as follows:

117. While the Government expects to see a trend in the creation, rather than the abolition, of parishes, there are circumstances where the principal council may conclude that the provision of effective and convenient local government and/or the reflection of community identity and interests may be best met, for example, by the abolition of a number of small parishes and the creation of a larger parish covering the same area. If, following a review, a principal council believes that this would provide the most appropriate community governance arrangements, then it will wish to make this recommendation; the same procedures apply to any recommendation to abolish a parish and/or parish council as to other recommendations (see paragraphs 90-97). Regulations provide for the transfer of property, rights and liabilities of

a parish council to the new successor parish council, or where none is proposed to the principal council itself.

118. Section 88 of the 2007 Act provides for a community governance review to recommend the alteration of the area of, or the abolition of, an existing parish as a result of a review. The area of abolished parishes does not have to be redistributed to other parishes, an area can become unparished. However, it is the government's view that it would be undesirable to see existing parishes abolished with the area becoming unparished with no community governance arrangements in place.

119. The abolition of parishes should not be undertaken unless clearly justified. Any decision a principal council may make on whether to abolish a parish should not be taken lightly. Under the previous parish review legislation, the Local Government and Rating Act 1997, the Secretary of State considered very carefully recommendations made by principal councils for the abolition of any parish (without replacement) given that to abolish parish areas removes a tier of local government. Between 1997 and 2008, the Government rarely received proposals to abolish parish councils, it received only four cases seeking abolition and of these only one was approved for abolition by the Secretary of State.

120. Exceptionally, there may be circumstances where abolition may be the most appropriate way forward. Under the 2007 Act provisions, the principal council would need to consider local opinion, including that of parish councillors and local electors. It would need to find evidence that the abolition of a parish council was justified, and that there was clear and sustained local support for such action. A factor taken into account by the Government in deciding abolition cases, was that local support for abolition needed to have been demonstrated over at least a period equivalent to two terms of office of the parish councillors (i.e. 8 years), and that such support was sufficiently informed. This means a properly constituted parish council should have had an opportunity to exercise its functions so that local people can judge its ability to contribute to local quality of life.

121. Where a community governance review is considering abolishing a parish council we would expect the review to consider what arrangements will be in place to engage with the communities in those areas once the parish is abolished. These arrangements might be an alternative forum run by or for the local community, or perhaps a residents' association. It is doubtful however, that abolition of a parish and its council could ever be justified as the most appropriate action in response to a particular contentious issue in the area or decision of the parish council.

6. I am able to take the factual history substantially from the summary provided by the Defendant.
7. The parish of Offerton Park came into existence on 15 October 2001, and the Claimant parish council on 1 April 2002. The parish is substantially a housing estate built between 1965 and 1972 with in all approximately 2500 local government electors and approximately 3700 residents.
8. It came into being following a consultative postal poll in March 2000. Only 481 of a possible 2610 respondents submitted responses. Of those 123 (approximately one-quarter of the actual respondents) expressed themselves in favour of the creation of a parish, 324 (67.5% of the actual respondents) expressed opposition. Notwithstanding that result, the Secretary of State considered it right to establish the parish and parish council.
9. In March and April 2010 the Defendant received two petitions (signed by 348 residents of the Parish), stating that those residents did not believe that the parish council was acting in the interests or for the benefit of the wider community, or was serving any useful purpose, and objecting to the additional tax burden levied on residents by the imposition of what was termed an unjustified parish precept. The signatories petitioned the Defendant “to dissolve/abolish the Offerton Park Parish council as soon as possible, but prior to the commencement of the new Tax- Year in 2010”.
10. In response to those petitions, the Stepping Hill Area Committee resolved, as it was required to do since the requisite minimum number of signatures had been obtained on the petitions, to request that the Defendant conduct a community governance review in accordance with the Act.
11. On 1 July 2010, the Defendant set out the terms of reference for the review and approved a timetable for the completion of the same.

Parish Poll

12. Independently of the review process, on 8 June 2010 the Claimant asked the Defendant to carry out a parish poll on the following question:
 “It has been proposed that the Offerton Park Parish council is abolished. Do you agree with the proposal?”
13. It will be noted that the question (framed by the Claimant) referred to the abolition of the council, and not the abolition of the parish.
14. The poll was held on 8 July 2010, with voting taking place at two polling stations. On a turnout of 16.7% of the electorate, 275 people (66% of those voting or 11% of the electorate) voted in favour of abolition, whilst 139 (34% of the voters and approximately 5.6% of the electorate) voted against abolition.

Stage 1 Consultation under the Community Governance Review

15. After the conclusion of the parish poll, the Defendant wrote to all residents and local businesses in the parish, enclosing detailed consultation materials, including Fact Sheet 3, an information booklet and consultation response form. The material included a statement as to what was a parish council and what were its roles and responsibilities (p371) and a list (and description) of the other bodies representing the views of the residents of the parish, including the Stepping Hill Area Committee of the Defendant, the Offerton Ward Committee, other Stockport Council committees, the Stockport Homes East Area Forum, the Greater Manchester Police Neighbourhood Policing Team, the Offerton Estate Community Empowerment, Stockport NHS Foundation Trust and other bodies (pp381-383).
16. The response form was in the following terms:
 “Stockport Council is consulting on the best way to represent the views of people living within Offerton Park Parish.
 “Please indicate your opinion YES (I agree with the statement) / NO (I disagree with the statement), next to each option in the table below. There is space overleaf for you to explain your decisions if you wish or to include any other comments.

	YES/NO
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1. The Parish should not be abolished and that its area should not be altered	
2. The geographical area of the Parish should be altered	
3. The Parish should be abolished	

17. In her report dated 11 August 2010, the Assistant Chief Executive (Strategy and Democracy) summarised the responses from residents to the Stage 1 consultation as follows:
- (a) 335 responses were received in total; after removing duplicate or conflicting responses, the 273 remaining responses were summarised thus:
- (i) to the first question (“the Parish should not be abolished and...its area should not be altered”), 128 responded, of whom 51 voted Yes and 77 No;
 - (ii) to the second (“the geographical area of the parish should be altered”), 116 responded with 9 voting Yes and 116 voting No;
 - (iii) to the third question (“the parish should be abolished”), 251 responded with 211 voting Yes and 40 No.
- (b) On any view only a very small proportion of the electorate took the trouble to respond, with (as regards the third question) approximately 8.5% of the electorate voting in favour of abolition and only about 2% against.
- (c) It is pertinent to note the comment of the Assistant Chief Executive as regards this first round of consultation: “the responses to the initial consultation exercise are low and the committee may wish to consider how much weight should be given to the responses which have the potential to dissolve a layer of government with taxation powers”.
18. The Claimant responded itself to the questionnaire, expressing the following views to the Defendant.
- (1) There was no legal basis for the abolition of the parish council and abolition was not supported by the majority of residents within the parish; and
 - (2) The current boundaries should be retained with the exception of an extension to include a hatched area shown on a plan.

19. As stated on behalf of the Defendant, it is pertinent to note that the Claimant did not make any criticism of the terms of reference of the review nor of the question asked in the Stage 1 consultation process, nor of the materials provided as part of the process.

Stage 2 Consultation

20. In the light of these responses, the Community Governance Review Committee resolved to request a further round of consultation.
21. Accordingly, under cover of a letter dated 20 August 2010, the Defendant commenced a second round of consultation. A letter was sent to all residents with a response form inviting a response to one only of the following three options.
- 1) Abolish the Parish council
 - 2) Keep the Parish council as it is
 - 3) Change the Parish Boundary
 - a) Reduce the Boundary
 - b) Extend the Boundary
22. A further Fact Sheet was sent with the letter (pp 447 to 453).
23. In order to ensure as wide a consultation as possible, the Defendant took the following additional steps to publicise the consultation process: arranging two public forums, door knocking across the parish, drop-in sessions in the parish, street surveys, allowing anonymous response forms and a consultation event expressly aimed at younger people. An overall summary of the result of the Stage 2 consultation process is provided in the table below.

	Response Forms	E-response forms	Door Step Survey	Forums	Drop-in Sessions	Street Survey	Half-Moon Lane	Youth Consultation
Total number engaged	619	10	286	10	18	3	88	46
Residents indicating %		8	23		5	1	7	1

Option 1 – Abolish the Parish council as their preferred option		412			Attendees Were not Asked to Inform facilitator s of their preference at this event				
	%	67%	80%	8%		28%	33%	8%	2%
Residents indicating Option 2 – Keep the Parish council as their preferred option	%	168	1	35		8	1	22	2
	%	27%	10%	12%		44%	33%	25%	4%
Residents indicating Option 3 – Change the Parish Boundary as their preferred option	%	31	1 (reduction)	0		0	1	0	0
	%	5%	10%	0%		0%	33%	0%	0%
No clear preference indicated	%	8	0	228		5	0	59	43
	%	1%	0%	80%		28%	0%	67%	93%

24. It is pertinent to note the following as regards the results set out in the table.

- (a) Approximately 25% of the electorate submitted responses and e-response forms; as appears from the table, 420 of these (approximately 17% of the electorate) supported the abolition of the parish council and 169 (approximately 6.8% of the electorate) indicated their wish to keep the council.
- (b) Although a large number of residents were the subject of door step survey, they were not specifically asked to indicate their views, which accounts for the small number of indicated preferences. To my mind it is dangerous to seek to draw conclusions from such small and random positive responses.
- (c) Similarly, those at the drop-in sessions were not asked to state a preference, but where they did that preference was recorded.
- (d) At the later Community Governance Review Committee meeting, the members were advised that it was generally considered that face-to-face surveys were likely to receive positive responses from respondents who wanted to provide a response that they thought the interviewer wanted to hear, and that it was appropriate to give greater weight to response forms since they could be completed at home anonymously.
- (e) It is obvious from the table that the substantial majority of the electorate (approximately 75%) could not be bothered to return the form.

Events Leading to Abolition

25. On the 26 October 2010 the Community Governance Review Committee considered the results of the consultation process. A report of the Assistant Chief Executive (Strategy and Democracy) was submitted, which contained the table I have set out above. The Minute of the meeting recorded a number of questions and comments made by members, including the following:

- “Whilst the results of the consultation made it clear that the majority of parish residents were in favour of abolition, regard should be had to community governance reflecting the identities and interests of the community and that such governance was effective and convenient;
- Although Department for Local Government & Communities/Electoral Commission Guidance stated that it was undesirable to abolish parishes without effective governance arrangements in place, it was recognised that there were alternative arrangements in place in the area that provided a satisfactory opportunity for community engagement and representation, including the Stepping Hill Area Committee, Offerton Ward Committee, Stockport Homes East Area forum, East Area Neighbourhood Policing Team meetings, Stockport LINK and the Offerton Estate Community Empowerment initiative;
- There had not been widespread support for the establishment of a Parish council when established in 2000 and the majority of respondents to the original consultation did not support the proposal;
- There was a clear message from residents through the consultation that they did not consider that the Parish council was working well for their area, nor that it provided an effective and convenient community governance opportunity;
- There had been consistent opposition to the Parish council during its eight year existence demonstrated by the fact that a consistent majority of respondents remained opposed to it. The message from the majority of the community was that the Parish council did not reflect the interests of that community, provide effective community cohesion nor play a positive role in the area;
- It was important to ensure that there continued to be facilities and activities provided in the area, in particular on the Offerton Estate, as these were clearly much valued by the community as borne out by the consultation feedback;
- There was very little support in the responses for altering the parish boundaries, therefore this option should not be pursued further.”

26. At the conclusion of the meeting it was resolved (among other things)

“That in the light of the consultation feedback from residents and stakeholders set out in the report and the reasons set out above, the Council Meeting be recommended to make a Reorganisation of Community Governance Order under the Local Government and Public Involvement in Health Act (LGPIHA) 2007 abolishing the Offerton Park Parish council and dissolving the Offerton Park Parish council”.

27. By letter dated 2 November 2010, residents were informed of the recommendations made by the Committee and told that the full Council would consider the matter on 2 December 2010 and take a final decision on 20 January 2011. Accordingly, the Council deferred the final decision until 20 January 2011, and an advertisement was placed in the local press advising of the intention to make a decision on that date and inviting any further representations.
28. On 18 January 2011 the Defendant received a letter of that date from the Claimant’s Solicitors, asserting that a decision to abolish the parish and dissolve its council would be in error of law because of inadequate consultation and failure to have regard to statutory guidance. The Defendant was urged to either resolve to reject the recommendations or to refer the review back to the Committee for reconsideration following a reopened and properly conducted consultation. It was stated that if the Defendant resolved to approve the same, then the Claimant would have no alternative but to apply for judicial review and were an Order to be made in advance of such application then it was stated that the Claimant would be further obliged to apply for an interim injunction suspending the effect of the Order.
29. Notwithstanding that letter, the Defendant on 20 January 2011 resolved to accept the recommendations of the Committee. The resolution was proposed by Councillor David Goddard, the Leader of the Council, who made a speech which is attached to his witness statement. In that speech he asserted that from the Parish Poll and the Stage 1 Consultation “the clear view of the public was showing that they wished to abolish the Parish and the parish council”; he went on to express the view that the result of

the Stage 2 Consultation showed that the residents “do not want the parish and they do not want the parish council”.

30. The Minute of the Council meeting stated that it “was recognised that the abolition of the Parish and dissolving the Offerton Parish council would leave the area unparished and without Council and that this should only be considered in exceptional circumstances. The Council considered that the strong message from the community from the Parish Poll, Stage 1 and Stage 2 of the consultation was evidence that there were exceptional circumstances in this case”. It was resolved “That in the light of the consultation feedback from residents and stakeholders set out in the report submitted and the reasons identified by the Community Governance Review Committee, as endorsed by the Executive, a Reorganisation of the Community Governance Order be made....abolishing the.....Parish and dissolving the....Council”.
31. By letter dated 25 January 2011 to the Claimant’s Solicitors, the Defendant responded to the letter of 18 January rebutting the allegations that had been made and asserting that “It is clear on the facts in this matter, and the clear message from the consultation exercise, that the people of Offerton do not wish to have a Parish nor a Parish council”. It was pointed out that the relevant paragraphs of the Guidance had been cited to the Council meeting on 20 January and asserted that the “decision clearly reflects the views of the majority of the local people”. The letter concluded that as the Defendant had resolved to make the Order, if it did not hear from the Claimant’s Solicitors within 7 days of the date of the letter, the Order would be implemented and the Defendant would not set a precept for the parish council for 2011. It was stated that any application for judicial review would be robustly defended.
32. By letter dated 31 January 2011 the Claimant’s Solicitors stated that the Claimant maintained its position as set out in the letter of 18 January and that they anticipated receiving instructions to prepare and serve a letter before action pursuant to the pre-action protocol on judicial review within

14 days of 31 January 2011. They sought the Defendant's confirmation that it would not take any further action until 14 days after the response to the letter before action. The letter concluded that failing that confirmation by return the Claimant's Solicitors might be instructed to commence proceedings for an injunction.

33. The Defendant responded on 8 February 2011, stating that it did not consider it appropriate to delay the decision to make the Order, especially when the Defendant was due to set the Council Tax level for 2011/12. It was confirmed that on 15 February 2011 the Defendant would make and publish the Order in line with its decision of 20 January. It was again asserted that the results of the consultation showed "that the majority of the people of Offerton Park do not want the existing additional layer of governance, nor to pay a precept to fund the Parish and Parish council". It was asserted that the Claimant had without proper authority attempted to set a precept (and I shall consider this matter when I consider the question of delay). The Defendant stated that it would not be setting a precept for the parish council for 2011/12.
34. At its budget meeting on 24 February 2011 the Defendant set the council tax levels for its area, which did not include a precept for the Claimant.
35. The pre-action protocol letter was sent on 4 March 2011, and the Defendant responded by letter of 21 March 2011, raising the issue of delay and stating that it was the Defendant's position that any claim would be brought out of time.
36. The present claim for judicial review was issued on 22 March 2011.
37. As previously mentioned, on 30 March 2011 Mr Justice Owen ordered that the Order be suspended and should not come into effect until further order of the court, and that the permission application be adjourned to a rolled up hearing.

38. On 11 May 2011 Judge Waksman QC made orders for the reappointment of parish councillors to hold office until 27 May 2011. On that day I continued the order.
39. The rolled up hearing was listed for one day on 27th May; however in the event there was not sufficient time to deal with the Defendant's submissions on delay and provision was made for the service of written submissions and counter submissions on delay thereafter, which culminated in the Defendant's reply served on 21 June 2011 to the Claimant's written submissions on delay.

The Submissions of the Parties

40. The Claimant submits that the Order should be quashed on two grounds, firstly, irrationality and failure to take account of material considerations; and, secondly, inadequate consultation.
41. The Defendant denies these allegations and contends that the claim has not been brought sufficiently promptly, such that permission for judicial review should be refused or no remedy should be granted.

The Grounds Propounded by the Claimant for Judicial Review

Ground 1: Irrationality and failure to take into account material considerations

42. The Claimant's written submissions focused on an attack on the assertion contained in the Defendant's letter of 25 January 2011, namely that it was "clear on the facts in this matter, and the clear message from the consultation exercise, that the people of Offerton do not wish to have a Parish nor a Parish council". Indeed, as previously appears, in its letter of 8 February 2011 the Defendant went further and asserted that "The results of the consultation show that the majority of the people of Offerton Park do not want the existing additional layer of governance, nor do they want to pay a precept to fund the Parish and Parish council".
43. The Claimant's written submissions were based on three fundamental submissions.

- (a) That the conclusion stated in the Defendant’s letter of 25 January 2011 was irrational.
 - (b) That the only safe inference to be drawn from the consultation exercises was that the large majority of the residents (75%) had no preference either way as to whether the parish council should be abolished or retained and the Defendant wrongfully failed to have regard to that matter, which was said to be a material consideration; and
 - (c) That the Defendant wrongfully failed to take account of the results of the wider Stage 2 consultation process (i.e consultation by means other than the submission of formal responses)
44. During the oral hearing, attention became focused on the Minutes of the Committee meeting of 26 October 2010 and of the full Council meeting of 20 January 2011. The former recorded that the resolution recommending abolition was made (inter alia) for “the reasons set out above”, which are quoted in paragraph 25 of this judgment; the latter Minutes recorded that the Council decision was made (inter alia) for “the reasons identified by the Community Governance Review Committee”.
45. Whilst caution needs to be exercised in treating what were stated to be members’ comments as part of the reasons for the decision, I am satisfied in this case that an operative reason for the decision of the Defendant of 20 January 2011 was the conclusion that the results of the consultation made it clear that the majority of residents favoured abolition:
- (a) The minute of the meeting of 20 January 2011 specifically recorded, as quoted above, that the Defendant’s decision was made (inter alia) for the reasons identified by the Community Governance Review committee;
 - (b) The minutes of the meeting of that committee on 26 October 2010 also specifically recorded that its resolution was for the minuted reasons, which included that stated in the first bullet point quoted in paragraph 25 of this judgment;
 - (c) It is not in my view possible to read the reference to “majority of parish residents” in the minute of the Review Committee meeting as a reference simply to a majority of respondents. Indeed later in the minute the point is separately made that a consistent majority of

respondents remained opposed to the parish council. I derive support for this interpretation of the Minute from the Defendant's letters of 25 January and 8 February 2011, with their references to "the majority" of local people which are quoted in paragraphs 31 and 33 above;

(d) It is true that members of the Committee and the full Council had the Assistant Chief Executive's report mentioned in paragraph 25 containing the table set out above, but I am satisfied nonetheless that the minuted conclusion regarding the view of the majority of residents is an accurate record of the meeting.

46. I am equally satisfied that the conclusion that the results of the consultation made it clear that the majority of residents were in favour of abolition was not a conclusion which it was possible rationally to reach from the consultation exercise. Councillor Corris's evidence was that: "we did not consider that people who did not respond were in favour or against of the abolition of the Parish and the Parish council" (paragraph 17 of her witness statement), but it does seem to me that in reaching the conclusion stated in the first bullet point in the minute of the meeting of 26 October 2010 the views of the majority who responded must have been treated as representative of the views of the majority of parish residents, when in my judgment there was no rational basis for such treatment. In my view, the only fair conclusion to be drawn from the consultation exercise is that the majority of the electors did not feel sufficiently strongly either way to return the postal response.

47. In his oral submissions, Mr Andrew Arden QC for the Defendant, submitted that the Defendant was "entitled and bound" to discount the views of those who did not respond. I disagree. The Defendant was bound to take account of material considerations, and in my view one such material consideration was the fact that whilst a clear majority of those who formally responded were in favour of abolition, the large majority of the electors had not expressed themselves in favour either of the abolition of what was an established tier of local government or its retention.

48. The Defendant sought to justify the decision to abolish on the ground that there was “ample evidence on which the Defendant was entitled to conclude that the public wished to see the Claimant abolished”. In support of that proposition its Counsel rely on:
- (a) The level of support for the parish council being always low
 - (b) The consultation exercise resulting in a majority in favour of abolition
 - (c) The knowledge of local Councillors and
 - (d) Events after these proceedings were issued.
49. I shall consider each of these submissions in turn.
- (a) It is true that the level of express support for the Parish council was always low, with only a small minority voting for its creation in 2000. However, it does not follow from that that “the public” in 2010 wanted it abolished, still less that the majority of parish residents favoured abolition. Indeed the result of the consultation exercises indicate to my mind that the majority of the residents held no strong view either way.
 - (b) The consultation exercises did not result in a majority of those consulted expressing themselves in favour of abolition, although a clear majority of those who responded (being a minority of the electorate) expressed themselves in favour.
 - (c) Whilst I accept, contrary to the Claimant’s submission, that the Councillors who voted on 20 January 2011 were entitled to decide which types of responses should be afforded greatest weight “and were thus entitled to place greatest reliance on formal responses as opposed to informal ones” [and indeed the reasons referred to in paragraph 24(d) above seem to me to be perfectly rational], as I have stated, I am not persuaded that there was any rational basis for the view that the results of the consultation made it clear that the majority of parish residents (as opposed to the majority who responded) favoured abolition, or any rational basis for another minuted reason for the decision to abolish, namely that “the message from **the majority of the community** [my emphasis] was that the Parish council did not reflect the interests of that community....nor [did it] play a positive role in the area”. The attribution of these views to the majority of the

residents seems to me to ignore the fact that the clear majority of the electorate did not feel sufficiently strongly to respond to the consultation exercises. I repeat what is stated in paragraph 46 above.

(d) Indeed I am not satisfied that there was any rational basis for the view that the public generally, as opposed to a section of it, wished to see the parish council (or the parish) abolished. True it is that that was the view held by various Councillors, but it is not suggested that that view was based on any proper consultation process (other than those carried out under the Community Governance review) such as would reasonably ground such a view; and contrary to Councillor Goddard's assertion when proposing the resolution to abolish, the conclusion he drew from the results of the consultation process regarding the view of "the public" in favour of abolition was not one that in my judgment could properly be drawn from that process. (I refer to what I have stated in paragraph (a) above).

(e) After the issue of proceedings a petition from over 500 residents has been obtained, making it clear that those residents welcomed the decision of the Defendant. However, that still amounts to only a small minority of the residents of the Parish (approximately 14%), or about 20% of the electorate if the petitioners were electors. It has not been demonstrated to me, nor do I think it possible rationally to conclude, that more than a minority of the electorate actually favour abolition.

50. It is argued that the Claimant's submission amounts to an attempt to introduce an unjustified requirement for an absolute majority in favour of abolition, which is not present either in the Act or the Guidance. Again I disagree with this submission. What is attacked is the irrational conclusion that the consultation showed a majority of residents in favour of abolition, as well as the unjustified assertion that the public generally, as opposed to a section of it, favoured abolition, and the unlawful failure to have regard to what I have held to be a material consideration, namely that the large majority of the electorate had not expressed themselves in favour either of abolition or retention of what was an established tier of local government

which, in accordance with the Guidance, should only be abolished where shown to be clearly justified.

51. I cannot be satisfied that the same decision would have been reached had a correct view been taken of the results of the consultation, and accordingly, subject to the submissions on delay, the decision to abolish must be quashed.
52. Nothing in this judgment should be taken to suggest that I am of the view that the vote of an absolute majority in favour of abolition must be obtained before a Parish may lawfully be abolished. If for good reason there is clear and sustained local support for abolition from what is (rationally) considered to be a sufficient body of the electorate then, if the majority is indifferent, abolition may be justifiable, provided that due regard is had to the Guidance. However, for the reasons stated, it seems to me that the decision making process in this case was flawed.

Ground 2: Inadequate Consultation

53. The Claimant submits that the consultation process was inadequate in three respects, and that this of itself should lead to the quashing of the Order. It is said that
 - (a) There was impermissible confusion between two legally separate questions, namely
 - (i) whether the parish should be dissolved and
 - (ii) whether the parish council should be
 - (b) There was a failure to distinguish between what might be relevant considerations as regard the above questions and irrelevant considerations. In particular, it is submitted that advice was not given, as it should have been, that the issue was not whether there was agreement with particular decisions of the parish council (since in accordance with paragraph 121 of the Guidance, “it is doubtful...that abolition of a parish and its council could ever be justified as the most appropriate action in response to a particular contentious issue...or decision of the parish council”) but whether the parish should exist at all and, if so, whether the parish council was the most appropriate form of governance;
 - (c) Allied to this, there was a failure to explain the other forms of Community Governance and in particular to make the key distinction

identified by the Guidance that no such other form of Governance would provide the level of democratic accountability offered by a parish council.

54. The Defendant denies that there was inadequate consultation, and submits that
- (a) although the consultation papers used the terms “Parish” and “Parish council” interchangeably, this is immaterial and there is no evidence that anyone was misled;
 - (b) and (c) there was adequate information given about the role and responsibilities of a parish council and of the nature and identity of other representative bodies, there being no obligation to go further in the consultation material.
55. I am not satisfied that the consultation was inadequate as alleged. As to the particular allegations
- (a) The second consultation exercise, unlike the first, sought views as to whether the parish council should be abolished or retained. (The first sought views as to whether the parish should be abolished). I do not consider that the Claimant can have any legitimate complaint about this: its own parish poll sought views on precisely the same question, it never suggested that the question in the second exercise should be framed differently and, most important, I accept the Defendant’s submission that there would be no sensible reason for retaining a parish without a council in this case, given the size of the electorate, since the only reason to keep a parish without a council would be to enable the parish to be run by a parish meeting. In the course of oral submissions, Mr Palmer, Counsel for the Claimant, accepted that this would not be appropriate in a parish of 2,500 electors.
 - (b) and (c) An impressive amount of material was distributed in connection with the first stage consultation (pp 369 – 386). I find that this explained clearly and accurately the role and responsibilities of a parish council in the following terms:

“Town, Parish or Community Councils are the same in terms of their powers and abilities, but a Town Council can also elect a Town Mayor instead of a Chair. Offerton Park Parish as a Parish council. A Parish council is a democratically elected body that has the power to do a number of things, including providing allotments, but shelters, supporting local crime

prevention initiatives and local highway matters such as street lighting and maintenance of roadside verges. They can also be involved in the provision of community transport schemes, sport and recreation facilities and tourism. A Parish council may perform all, some or none of the above functions depending on their population, size, facilities and budget. However, all Parish councils are charged with providing a focus for representing local issues and identity and are consulted on planning applications in their area”.

The other representative bodies were identified (pp 381-383), together with a description of their roles and how frequently they met. It seems to me that this material, taken as a whole, provided the electorate with all that they reasonably required to make an informed decision on the questions posed, and I do not consider that there was any need specifically to draw attention to what was stated in paragraph 121 of the Guidance, although this was a matter for the Defendant to consider when deciding whether to abolish.

Delay

56. The Defendant’s submissions in support of the contention that the claim has not been brought sufficiently promptly, such that the permission for judicial review should be refused or no remedy should be granted, have been summarised in its Counsel’s written submissions, as follows:
- (i) “The Defendant has been proceeding towards making a reorganisation order since October 26, 2010, when the Community Governance Review Committee recommended that the Defendant abolish the Parish and dissolve the Parish council.
 - (ii) The decision to make the reorganisation order was taken on January 20, 2011.
 - (iii) It was an inevitable concomitant of the reorganisation order that no precept could lawfully be set for the financial year (2011-12) commencing April 1, 2011 (if only because it would be perverse for a local authority to include within its council tax a precept for a body that it had made an order should be abolished before the start of the financial year to which the precept would relate); the only way to avoid that conclusion was for the reorganisation order to have been quashed or its effect suspended *before* the Defendant set its council tax for that year on February 24, 2011.
 - (iv) The Claimant therefore needed to have issued proceedings and obtain interim relief preventing the reorganisation order being made or suspending its effect before the Defendant set the council tax (on February 24, 2011. In the alternative, it may have been sufficient for the Claimant to have issued proceedings for such

interim relief before that date, perhaps leading the Defendant to delay setting its council tax until a court could consider that application, something that no authority would do or could reasonably be expected to do merely because proceedings had been threatened. Unless and until such an order had been made, it would remain the case that the Defendant was unable lawfully to include a precept in its council tax (even if such were properly made and received, even on an anticipatory basis) when on the face of it there would be no parish council for the financial year to which it would relate, *i.e.* there would simply be no basis on which it could so do.

- (v) Once a council tax was issued which included no precept, there was (and is) no basis on which the Defendant could or can now collect a precept for 2011-12.
- (vi) All of the foregoing was either known to or knowable by the Claimant, as a matter of law and public information, yet the proceedings themselves were not issued until March 22, 2011.
- (vii) It follows either that the Claimant will now not have any funding for 2011-12, or else that if the court orders any monies to be paid in its support by the Defendant, it will be irrecoverable through a precept, *i.e.* the local taxpayers of Stockport would have to fund it, rather than the local taxpayers of the parish. This is directly attributable to the failure to issue and seek relief timeously.”

57. There is an issue between the parties as to whether the three month time limit in CPR 54.5(1)(b) runs from the date of the Resolution to abolish (20 January 2011) or the date of the Order (15 February 2011). If it were necessary to do so, I would hold, notwithstanding the decision of the House of Lords in *R v Hammersmith LBC ex p Burkett* [2002] 1 WLR 1593, that the time runs from the date of the resolution, for that was when the substantive decision was made, the making of the Order being merely ancillary thereto. This case to my mind is distinguishable from the case of *Burkett*, where the resolution of the local planning authority was conditional on other events occurring, which might never occur, and was entirely inchoate until then.

58. However, in my view this issue is entirely academic because on any view the claim form was filed well within the requisite three months period, so that the issue is whether it was filed promptly or whether there was undue delay in its being filed. In my view the Claimant could in no way be criticised for delaying proceedings until after receipt of the Defendant’s letter of 8 February 2011, which was sent just one week before the date of

the Order. The claim form thus was filed 6 weeks after the date of that letter and 5 weeks after the date of the Order. The question for me is whether there was undue delay after 8 February, such that permission should not be granted or no remedy ordered.

59. There is also an issue as to whether the Claimants issuing of its precept seeking payment of £59,631.52 on 9 February 2011 was valid (which depends upon whether the meeting of the parish council on that date was validly held). Again it seems to me that this issue is entirely academic because the Defendant, in its letter of 8 February 2011, made it clear that come what may it would not be setting a precept for the parish council; furthermore the Defendant's submissions proceed upon the basis that even if the precept had been validly issued, the Defendant could not lawfully have set a precept for the parish council for the financial year 2011-12 for the reasons set out in paragraph (iii) of its submissions.
60. As appears from those submissions, the Defendant's case is based upon the following premises:
- (a) That if the Order is quashed, the amount of the precept may only be recovered lawfully from the general body of council tax payers, and not from taxpayers of the Parish, as should properly have been the case.
 - (b) It behove the Claimant, as part of its duty to act promptly, to obtain interim relief preventing the Order being made prior to the setting of council tax by the Defendant on 24 February 2011.
61. For present purposes, I proceed upon the basis that the Defendant is correct in law in asserting that if the Order is quashed any precept can only be recovered lawfully from the general body of Council tax payers, since it appears to me that the Defendant's submissions as set out in paragraph 24 of its Reply to the Claimant's written submissions on delay are correct in law.

62. Notwithstanding the foregoing, I have formed the view that there was no undue delay after 8 February in the filing of proceedings in this case, and that the claim form was filed promptly as required by CPR 54.5(1)(a). To my mind, for the following reasons it would not be just to deny a quashing order to the Claimant.
- (a) I have held that the resolution to abolish the Claimant and Order made ancillary thereto were made on an unlawful basis. Thus, if the Order is not quashed the electors of Offerton Park parish will have been denied continued representation by their parish council and will have had a tier of local democracy removed from them unlawfully. I agree with the submission of the Claimant that the Court should be slow to refuse a remedy in those circumstances.
 - (b) To my mind the Defendant's difficulties are, again as submitted by the Claimant, of the Defendant's own making. In its letter of 25 January 2011 the Defendant confirmed that if it did not hear from the Claimant within 7 days the Order would be implemented and the Defendant would not set a precept for 2011 in anticipation of dissolution. The Defendant did hear from the Claimant within that period of seven days: in their letter of 31 January 2011 the Claimant's solicitors made it clear that the position as set out in their letter of 18 January was maintained and that they anticipated receiving instructions to prepare a pre-action protocol letter before action within 14 days and invited the Defendant's confirmation that no further action would be taken until 14 days after its response to that letter.
 - (c) In its letter of 8 February 2011 the Defendant made it perfectly plain that it was not prepared to delay implementation of the resolution, notwithstanding the threatened proceedings, and that the Order would be made on 15 February with no precept being set for 2011-12.
 - (d) The pre-action protocol letter was sent just over 3 weeks later, which period in my view was reasonable. The Defendant replied 2 ½ weeks later, and proceedings were issued immediately thereafter.
 - (e) In my view it does not reasonably fall to the Defendant to criticise the Claimant for failing to take action earlier to restrain it from its unlawful act, given that it had determined, notwithstanding the threat

of legal proceedings, to press ahead with the implementation of the resolution, which meant that a precept would not be set for the parish council for 2011-12. In those circumstances it does seem to me that the Defendant took upon itself the risk of the litigation.

(f) In any event, the extent of the financial prejudice has been overstated by the Defendant. If the Claimant is abolished, the Defendant will have to assume responsibility for the balance of an outstanding loan amounting to £9,251.54, and in addition there may be staffing costs transferred. Albeit that this is a time of financial stringency, it seems to me that the prejudice to the Claimant if relief is denied in respect of what I have held would be its unlawful abolition, outweighs the prejudice to the Council tax payers generally of Stockport if relief is granted.

(g) In my view, it would be wrong to speculate as to whether the Defendant will proceed to the lawful abolition of the Claimant following the quashing of the order.

63. In the circumstances, I grant permission for the claim to be brought and quash the Order. When this judgment is formally handed down, I shall of course consider ancillary matters if these have not been agreed.