

1 December 2011

Mr Chris Elliot
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Dear Mr Elliot,

The Local Government and Public Involvement in Health Act 2007 Community Governance review – Burton Green

Thank you for your circular letter of the 25th November 2011 with regard to the above and of which I attach a copy for ease of reference. News of the establishment of the parish council is welcome.

You will appreciate that it is important for the success of this venture and for the credibility of the parish council as a whole, and of its individual councillors, that they are able to demonstrate a democratic mandate. I am therefore concerned at the intention that there should be no election for this parish council until May 2015, and that vacant seats in the interim shall be filled by co-option. The time scale is particularly important given the immediate threat to this community.

Co-option is an entirely appropriate mechanism where the process of nomination and election has failed to produce sufficient candidates, or if an individual is co-opted by virtue of their expertise or role in another setting (ex officio). I make no criticism of individual councillors who have allowed themselves to be put forward in those circumstances. But to use co-option *instead* of the established democratic process of nomination and election would appear contrary at least to the spirit of the Act that has given rise to this change. I am therefore writing to ask that you seek further review of these points by councillors, and to ensure that the legal advice as to their powers in this regard is confirmed.

I have no expertise in respect of the law in this area but I have attached a section taken from a publication from the Association of Council Secretaries and Solicitors dated 2006 which suggests that the opportunity for an election to a vacancy is required under the 1972 Act before co-option can occur.

I have quickly searched the 2007 Act which is available at the link below.

<http://www.legislation.gov.uk/ukpga/2007/28/introduction#openingWholeMod>

It would appear that

Section 76 amends the 1972 Act to provide for “Appointed” councillors, but this requires existing councillors to make the appointment.

Section 87(2)(e) provides that a *new* parish is constituted by separating part of an existing parish. This would imply that a new parish has no established councillors and therefore an election is required to establish a *new* council.

Section 53 empowers the local authority to determine the timing of an election.

I do not doubt that the issues are more complicated but I think they merit further investigation. I hope this is constructive.

Kind regards,

Yours sincerely,

Dr Paul Thornton

c.c. Councillor George Illingworth
Councillor Anne Blacklock
Clerk to Stoneleigh Parish Council for onward circulation to current Parish
Councillors
Mrs Rona Taylor, Chair, Burton Green Residents Association
Circulation: Burton Green Neighbourhood elist

GUIDE TO FILLING A CASUAL VACANCY IN THE OFFICE OF PARISH COUNCILLOR

1 PROCEDURE

In the event of a casual vacancy occurring in the office of parish councillor, public notice must be given by the Parish Council in accordance with Section 87(2) of the Local Government Act 1972.

In a case where the Parish Council declare the office to be vacant in accordance with Section 86 of the 1972 Act (i.e. through the disqualification or non-attendance of a member) the vacancy must be publicly advertised **immediately**.

In all other cases, public notice of the vacancy must be given as soon as practical after the vacancy has occurred.

NOTE: It is possible that the district or unitary council has local arrangements with parish councils to advertise vacancies. It is therefore sensible to contact them first normally through their elections unit.

2 NOTICE OF VACANCY

Section 232 of the Local Government Act 1972 requires that a public notice required to be given by a local authority shall be given by posting the notice in some conspicuous place or places within the area of the local authority and in such other manner, if any, as appears to the local authority to be desirable for giving publicity to the notice.

A template form of notice to be used when a casual vacancy occurs is attached to these notes.

The date on which the notice is posted should be inserted at the bottom of the notice and a copy of the notice should be forwarded to the elections officer at the local District or Unitary Council immediately

3 CLAIMING A POLL

Proper notification of the vacancy is essential because, on such vacancy occurring in the office of Parish Councillor, an election to fill the vacancy shall be held if, within fourteen days* after public notice of the vacancy has been given, notice in writing of a request for such an election has been given to the returning officer by ten electors for the area.

If no such request is received within the time stipulated, the Parish Council must fill the vacancy within sixty days* and this may be done by co-option (see 4 below).

Once an election has been requested, however, the vacancy must be filled by election and the Council cannot fill it by co-option, even if there are insufficient candidates.

Where a casual vacancy occurs within six months before the day on which the councillor whose office is vacant would normally have retired, an election to fill the vacancy shall not be held.

121

4 VOTING BY COUNCIL ON CASUAL VACANCY ("CO-OPTION")

In the case of co-option the following procedure should be followed:-

(a) Notice of the election should be given in the agenda for the meeting of the Parish/Town Council

(b) When the item is reached, the Chairman should call for nominations, which should be duly proposed and seconded

(c) When all the nominations have been received a vote should be taken. It is usual for the candidate's names to be put in alphabetical order.

(d) After the vote has been taken, the Chairman should declare the candidate who received the highest number of votes duly elected.

(e) The person elected must make a declaration of acceptance of office before, or at, the first meeting of the Parish Council following his election in the presence of a member of the Parish Council or the Proper Officer of the Parish Council. The declaration is then retained in the parish records

NOTE: There is nothing preventing Councillors from approaching persons to offer themselves for co-option or even advertising for co-optee applicants. Applications might

also be invited to provide a written “application” or invited to speak to the council prior to any voting. If such arrangements are to be applied, they should be carefully drafted and provided to applicants. It is imperative that all applicants are treated alike in order that the arrangements are seen as fair. Applicants under such arrangements should be discouraged from any personal lobbying.

*computed in accordance with Rule 2 of Schedule 2 of the Local Elections (Parishes and Communities) Rules 1986

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Enquiries to: Mrs. Gillian Friar

25th November 2011

Dear Elector(s)

**The Local Government and Public Involvement in Health Act 2007
Community Governance Review - Burton Green**

I refer to my recent letters regarding the petition received from the residents of Burton Green to establish a separate Parish and Parish Council for Burton Green.

In accordance with the provisions of the above Act, I am writing to you again to let you know that the Council has now adopted the following recommendations reflecting the identities and interests of the community and that they are effective and convenient:

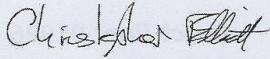
- That a Parish and Parish Council for the area of the existing Burton Green ward of Ashow, Burton Green and Stoneleigh joint Parish Council should be established.
- The Parish area should be known as Burton Green and the Parish Council should be known as Burton Green Parish Council.
- The size of the Parish Council should be represented by 7 Councillors, with the date for the next ordinary elections to be held on Thursday 7th May 2015 and every four years after that date.
- The current 4 sitting Parish Councillors who serve the Burton Green ward of Ashow, Burton Green and Stoneleigh joint Parish Council should transfer to the new Burton Green Parish Council to serve their remaining term of office until the day of the next ordinary elections.
- The remaining vacant seats should be subsequently filled by co-option and those Councillors co-opted should serve the remaining term of office on the Parish Council until the day of the next ordinary elections.



The Council will now make the necessary order which will bring the above Parish and Parish Council into effect on 1st April 2012.

Notices will appear on local notice boards when the order has been made.

Yours sincerely



Chris Elliott
Returning Officer & Electoral Registration Officer

Enquiries for Mrs. Gillian Filar

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