

Community Governance in Birmingham: The Next Decade

Paper 3: Sutton Coldfield Town Council:
Initial Analysis



February 2015

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Introduction

This paper is one of a series being published to consult people on our Community Governance Review. The Review is considering the question of whether Sutton Coldfield should have a Town Council, but it is doing so as part of a much wider review of governance in the city. Please refer to Paper 1 for a full introduction to the Review and the issues we are discussing for Birmingham as a whole.

Residents in Sutton Coldfield have presented a valid petition to Birmingham City Council requesting the establishment of a new Sutton Coldfield Town Council within the existing Sutton Coldfield District and Parliamentary constituency boundaries. On 19 September 2014 Birmingham City Council resolved to carry out a Community Governance Review (CGR), including, but not restricted to, the proposals for a Sutton Coldfield Town Council.

This paper provides a summary of our initial analysis of the implications of the proposal. A more detailed report considering the key issues relating to the proposal – and also the more detailed aims put forward by the Sutton Coldfield Referendum Group – can be found at www.birmingham.gov.uk/community-governance-review

Further, more formal consultation on our final response to the petition will take place with Sutton Coldfield residents in the summer.

Birmingham is a unitary authority which is responsible for providing all local authority services within its boundaries. A town council operates at a local level below the unitary council. It is a democratically elected, additional and legally independent tier of local government with its own councillors, which can provide a range of local services within a defined area, such as Sutton Coldfield. Community councils, neighbourhood councils, village councils, parish councils and town councils all operate within this framework.

What is the role of a town council?

Town and parish councils are at the heart of many communities in England. They provide neighbourhoods, villages and towns with a voice and a structure for taking local action – real people power at grassroots level. They are able to tackle specific local issues of concern and residents can work closely with their parish/town councillors to improve their locality.

Town councils work towards supporting responsiveness to community needs and interests. Their activities fall into three main categories: representing the local community; delivering services to meet local needs; striving to improve quality of life and community wellbeing.

Town councils are not tasked with statutory responsibilities relating to the provision of housing, social care, education and waste collection etc. They are a statutory consultee in relation to planning, but they are not a Planning Authority. They have the option to exercise a variety of powers and duties including the delivery of a small number of specific local services that add to those provided by the principal council such as:

Recreation grounds	Allotments
Public conveniences	Control of litter
Play areas	Community centres
Parks and open spaces	Crime prevention
Festivals and fêtes	Traffic calming measures
Tourism activities	Markets

A town council can choose not to deliver any services and instead act purely as a means of influencing local service provision made by the principal council or other partners such as the police.

Alternatively, a town council can provide additional services to those provided by the principal council such as the provision of car parking with the consent of the principal council. A list of town council duties and powers is in Appendix 1.

When a town council (e.g. Sutton Coldfield) is formed it can enter into discussions with the principal council (Birmingham City Council) about the transfer of services, budgets and assets within the areas listed in the appendix. However this is subject to mutual agreement and securing “Best Value” by law.

Services outside town council statutory areas

A town council is not a replacement for a principal council and will not deliver complete independence and autonomy. To our knowledge there are no parish or town councils that deliver services outside the remit shown in the appendix.

While it is possible for a town council to deliver services outside these areas, there are such legal constraints, challenges and risks involved that make this unlikely on a significant scale. Furthermore, within the parameters of the roles of different types of local authorities, town councils are the most local level of government. They provide communities with a democratic voice and a structure for taking community action. Their role is not to operate as a council that would hold the budget for and deliver virtually all services provided in the locality – that is the role of the principal council.

The establishment of a town council may therefore not: involve the transfer of significant funds, services, land or other assets; give significant power over the current services provided in the areas of refuse collection and highways; give power to bypass the Planning Authority or the Birmingham's Development Plan "Birmingham Plan 2031" or create a major role, input or power in the delivery of medical, police, education or fire services.

All of the providers of these services support local delivery and welcome influence from all local residents and groups. However it would be misleading to indicate that a town council would enable an area to disengage itself from the strategic deliverers of services in its area.

The Localism Act 2011 enables relevant bodies such as voluntary and community bodies and social enterprises, employees of the authority and parish or town councils to express an interest in running a local authority service. This is called the **Community Right to Challenge** (CRC). Exceptions to this are services which are excluded by legislation (e.g. packages of services for health and social care for named individuals). The CRC relates to 'relevant services' and not functions (see Appendix 2).

Principal councils must consider an expression of interest submitted by a relevant body. There are various reasons why an expression of interest can be rejected or modified, but if it is accepted, the authority must carry out a procurement exercise. Hence, there is no guarantee that the eventual provider of the service would be the organisation that launched the expression of interest.

Parish and town councils can also exercise the Community Right to Bid, to purchase assets of community value (see Appendix 2).

Neighbourhood Planning

The Localism Act 2011 also created a new process for Neighbourhood Planning, which enables parish councils as well as neighbourhood forums to work with the principal council (Planning Authority) to create a plan for their area. The plan sets out policies and priorities for the physical development of the area and must be in accordance with the Development Plan approved by the Planning Authority and the Secretary of State. Details of the process are in the Appendix 2. Guidance on Neighbourhood Planning can be found at

<http://www.birmingham.gov.uk/neighbourhoodplanning>

What are the governance requirements of a town council?

A town council requires:

- The appointment of town councillors, from which a Chair and Vice Chair are elected (these positions can be termed Town Mayor and Deputy Town Mayor). Based on the numbers elected elsewhere, it is likely that Sutton Coldfield Town Council would require in the region of 24-32 Town Councillors, although there is no upper limit. Town Councillors may be volunteers or may be paid an allowance determined by the Town Council. These councillors would be in addition to the 12 city councillors already elected in the four wards that currently make up Sutton Coldfield District.
- A responsible finance officer.

Although not required by law, a town clerk is essential to oversee the administration of a town council and would need to be appointed.

In addition to this there are other responsibilities such as the required meetings of the council (four per year), the elections of Councillors (every four years) central administration functions (and associated posts), compliance with standing orders and financial regulations (for the supply of goods and services) and financial auditing requirements.

What are the financial implications of a town council?

Town councils are funded principally through an annual precept – an additional Council Tax levied on local tax payers. The money raised locally through the precept belongs to the town council not the principal council and the town council takes decisions on how it is spent, within its legal remit.

This has always been the primary funding mechanism of town councils, as a means to deliver governance and administration related to the council and to provide additional services to enhance at a local level those already provided by the principal council.

Sutton Coldfield Town Council – estimated precept per household

At the national average of a £50 precept (for a band D property), the estimated total precept raised for Sutton Town Council would be in the region of £1.8m.

As in the case of Council Tax the precept payable by residents will vary according to the tax band of the property they live in. If a precept of £50 is set for a given year, a household in a Band D property would pay £50 whereas a household living in a Band H property, who would pay double the amount i.e. £100. On the other hand, a household in a Band B property would pay £39 (78% of £50).

Running costs

All councils have costs related to the actual functions of running a council. In the case of a town council it is considered that such costs would include democratic, management, civic and central administrative charges.

Benchmarking was undertaken against Shrewsbury Town Council, Weston-super-Mare Town Council and Lichfield City Council as a means of establishing what the level of these costs may be and what percentage of the gross expenditure this would amount to.

The costs vary considerably from £145,000 (Lichfield), £159,000 (Weston-super-Mare) to £448,000 for Shrewsbury.

These costs amounted to between 9% and 16% of gross expenditure (total expenditure supported by other income in addition to the precept,

such as grants and charges and resources to make good the loss of Council Tax Support Grant which was provided to parishes up to 2012/13).

Whilst it is certain these costs will be incurred by the proposed Sutton Coldfield Town Council, it is difficult to provide a reasonable estimate, due to the range of factors (numbers of members, direct services, level of income etc.) that can influence the operating model. However, based on the findings and the size of the proposed Sutton Town Council, one could assume at least £200,000 per annum.

Other grants and income

Principal councils (e.g. Birmingham City Council) can by mutual agreement provide a grant to deliver some services and transfer staff and assets if appropriate.

Any such transfer would require the principal council to demonstrate "Best Value" (for instance would it be more efficient, effective or economic to deliver services strategically, by the town council, or through a commissioning model) and consideration would need to be given to any debts or liabilities associated with those services or assets.

Of the three town or parish councils we have benchmarked in detail (Lichfield, Shrewsbury and Weston-super-Mare) only one, Shrewsbury received such a grant.

A broader benchmarking exercise was conducted with 14 parish and town councils, where again only Shrewsbury Town Council received ongoing funding from the principal council.

Funding can also be raised through, for instance income from car parks or markets, rental of property etc.

Proposed Sutton Town Council and the Wider Community Governance Review

In considering the options available to Sutton Coldfield, residents will need to weigh up the benefits proposed by the models within the wider Community Governance Review and the benefits of having a town council either alongside or instead of those proposals. Furthermore, residents from across Birmingham will need to consider whether a town council in Sutton Coldfield is something they feel would benefit Birmingham as a whole or whether other options would provide greater benefits.

A Sutton Coldfield Town Council on the proposed boundary would sit alongside district arrangements. The proposals in the rest of this consultation include a strengthened role for districts in scrutinising all local public services and developing partnerships in the area. Consideration will need to be given to how the two could function together. In addition, the Local Operating Model to be set out in Paper 5 later in the year will suggest service delivery arrangements at a level covering both Sutton Coldfield and Erdington (the Local Service Hubs referred to in the introductory paper).

The wider Birmingham approach to neighbourhoods (set out in Paper 2) includes further support for neighbourhood forums and potentially encourage the creation of neighbourhood councils (parish councils with similar powers but at a much more local, neighbourhood level). These would operate within smaller more distinct localities than that covered by a town council – aligning with the diversity of neighbourhoods and communities within Sutton Coldfield District and their different needs and priorities.

Consultation questions

A further consultation on our final response to the Sutton Coldfield proposals will be carried out specifically with Sutton Coldfield residents in the summer.

At this stage we would like to hear your initial views on:

- **The benefits of having a town council, as compared with the governance arrangements proposed in Paper 2 (see above) – think about what services it could provide by law and how it would improve local democracy?**
- **The drawbacks and costs of a town council**
- **The impact of a Sutton Coldfield Town Council on the governance of Birmingham as a whole**

Appendix 1: The powers and duties of parish councils

Function	Powers and Duties
Allotments	Powers to provide allotments. Duty to provide allotment gardens if demand unsatisfied
Allowances for councillors	Power to pay councillors allowances
Baths and washhouses	Power to provide public baths and washhouses
Borrowing	Power to borrow money for statutory functions
Burial grounds, cemeteries, and crematoria	Power to acquire and maintain Power to provide Power to agree to maintain monuments and memorials Power to contribute towards expenses of cemeteries
Bus shelters	Power to provide and maintain shelters
By-laws	Power to make by-laws for public walks and pleasure grounds Cycle parks Baths and washhouses Public bathing Hiring of pleasure boats in parks and pleasure grounds Open spaces and burial grounds Mortuaries and post-mortem rooms
Charities	Duty to receive accounts of parochial charities Power to appoint trustees of parochial charities Power to act as trustee of non-ecclesiastical charity

Function	Powers and Duties
Clocks	Power to provide public clocks
Closed churchyards	Powers as to maintenance
Commons and common pastures	<p>Powers in relation to enclosure, as to regulation and management, and as to providing common pasture</p> <p>Power to protect unclaimed common land from unlawful interference</p>
Community Right to Challenge	Power to submit an expression of interest in running a service provided by a principal council
Conference facilities	Power to provide and encourage the use of facilities
Community centres and village halls	Power to provide and equip buildings for use of clubs having athletic, social or educational objectives
Crime prevention	Powers to spend money on various crime prevention measures
Delegated functions	<p>Power to assume a function delegated by another authority</p> <p>Power to ensure effective discharge of Council functions</p> <p>Power to employ someone to carry out Council functions</p>
Dog control orders	<p>Power to make orders for dog control offences for land in the council's area</p> <p>Power to issue fixed penalty notices for offences committed under dog control orders</p>
Drainage	Power to deal with ponds and ditches

Function	Powers and Duties
Entertainment and the arts	Provision of entertainment and support of the arts
General Power of Competence - England	Power for an eligible council to do anything subject to statutory prohibitions, restrictions, and limitations which include those in place before or after the introduction of the General Power of Competence
Highways	<p>Power to repair and maintain public footpaths and bridleways</p> <p>Power to light roads and public places</p> <p>Provision of litter bins</p> <p>Power to provide parking places for vehicles, bicycles and motorcycles</p> <p>Power to enter into agreement as to dedication and widening</p> <p>Power to provide roadside seats and shelters, and omnibus shelters</p> <p>Consent of parish council required for ending maintenance of highway at public expense, or for stopping up or diversion of highway</p> <p>Power to complain to the Highways Authority as to protection of rights of way and roadside wastes</p> <p>Power to provide traffic signs and other notices</p> <p>Power to plant trees etc. and to maintain roadside verges</p>
Investments	Power to participate in schemes of collective investment
Land	<p>Power to acquire by agreement, to appropriate, to dispose of</p> <p>Power to accept gifts of land</p>
Lighting	Power to light roads and public places

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Function	Powers and Duties
Litter	Provision of receptacles
Lotteries	Powers to promote
Mortuaries and post-mortem rooms	Power to provide mortuaries and post-mortem rooms
Nuisances	Power to deal with offensive ditches
Open spaces	Power to acquire land and maintain
Parish property and documents	Powers to direct as to their custody
Postal and tele-communications facilities	Power to pay the Post Office, British Tele-communications or any other public telecommunications operator any loss sustained in providing post or telegraph office or tele-communications facilities
Public buildings and village halls	Power to provide buildings for offices and for public meetings and assemblies
Public conveniences	Power to provide
Raising of finance	Power to raise money through a precept
Records	Power to collect, exhibit and purchase local records
Recreation	<p>Power to acquire land for or to provide recreation grounds, public walks, pleasure grounds and open spaces and to manage and control them</p> <p>Power to provide gymnasiums, playing fields, holiday camps</p> <p>Provision of boating pools</p>
Town and Country Planning	Right to be notified of planning applications

Function	Powers and Duties
Tourism	Power to contribute to the encouragement of tourism
Traffic calming	Powers to contribute financially to traffic-calming schemes
Transport	Powers to spend money on community transport schemes
War memorials	Power to maintain, repair, protect and adapt war memorials
Water supply	Power to utilise well, spring or stream and to provide facilities for obtaining water therefrom

This list is based on the Department of Environment Consultation Paper, "The Role of Parish and Town Councils in England" August 1992.

This is not a comprehensive list. It has been cross checked with the information provided by the National Association of Local Councils (NALC). The full list, including reference to legislation, is contained in the report Local Councils Explained (2013), which is available to purchase from NALC.

Appendix 2: Further background information

Different types of local council

Local councils are the first formal tier of English local government. They are elected corporate bodies.

All parish councils have the same powers and duties (see Appendix 1). After 1974 many larger parish councils covering whole towns began calling themselves Town Councils. There is no difference in their powers, but the Chair can style themselves "Town Mayor". However because of their larger scale and therefore income they tend to have a staff and other resources that smaller local councils do not.

The 2007 Local Democracy and Public Involvement in Health Act brought in the right to set up parish councils in London for the first time. To encourage more local councils in cities generally the act also enabled them to be called "neighbourhood" or "community" councils (the name "village council" is also available).

They are not to be confused with Parochial Church Councils that administer the parishes of the Church of England, though they may cover the same area, particularly in rural areas.

Council Tax precept

Parish councils have the power to levy a precept on their residents to support their functions and local projects. These days this is added to the Council Tax bill sent by the primary authority. There is no limit to the rate of the precept but the money can only be raised for a limited number of purposes above.

The average precept per household across all 8,805 parishes in 2013 was just over £50 at Council Tax Band D. Almost half raised less than £30 and 97% charged less than £100. The total precept was less than £5,000 for 34% of parish councils and less than £100,000 for 90% of councils. Just 1% raise over £500,000 and only two councils are above £1.9m.

Community Right to Challenge

The CRC relates to 'relevant services' and not functions. Generally speaking, a function is a duty or power that requires decision-making by the responsible person or body, whereas a service does not.

What constitutes a function and a service?

Example 1: Planning

Section 70 (1) of the Town and Country Planning Act 1990 gives powers to local planning authorities to grant or refuse planning permission where a planning application is made to the authority. The right does not allow for the function of determining planning applications to be provided by a third party. The actual decision on whether or not to grant planning permission will therefore remain with Birmingham City Council. The delivery of planning functions, for example the processing of a planning application (not the decision), may be carried out by the local planning authority itself, or by a third party on behalf of the authority.

Example 2: Youth justice

The Crime and Disorder Act (1998) places a duty on local authorities to ensure there is appropriate provision of youth justice services. Decisions (reached following consultation with interested parties as part of the commissioning cycle) on which services are provided, where they are located, funding etc. are a function of the authority. The community right to challenge will not apply here.

Individual (parts of) services with young people to prevent further offending may be provided by the local authority, or by a third party on behalf of the authority. This means the authority would set out the requirements of the service as part of any procurement exercise which potential providers would bid to deliver. This may, for example, include addressing specific difficulties faced by young offenders, such as drug and alcohol problems or homelessness. The right will apply here.

Relevant authorities (e.g. Birmingham City Council) must consider an expression of interest submitted by a relevant body (to run or assist in running a service) which is in writing, within an specific time period for submission and meets other requirements for such an expression of interest (e.g. financial viability, ability to provide or assist in providing a service, how the provision or assistance will promote or improve the social, economic or environmental wellbeing of the relevant authority's area; and how it will meet the needs of the users of the relevant service).

There are various reasons why an expression of interest can be rejected, but if it is accepted, with or without modification, the authority must carry out a procurement exercise in respect of the relevant services. This must be undertaken in accordance with public procurement law in the usual way, so would be open to other bodies other than the one providing the initial expression of interest.

Authorities are also required to consider whether and how an expression of interest and any subsequent procurement exercise, can promote or improve the social, economic or environmental wellbeing of its area. This means that the City Council would need to consider the wider implications for the whole city. This is intended to encourage authorities to consider the benefits of including social benefit clauses in the delivery of the service. This is consistent with public authorities' Best Value duty and the duty in the Public Services (Social Value) Act 2012 to consider how the services they commission and procure might improve the economic, social and environmental wellbeing of the area.

The Localism Act 2011 does not expressly require a contract to be awarded and in some cases, there may be a duty to *not* award e.g. where "Best Value" in law has not been demonstrated. Termination costs of existing contracts or the breakup costs of affected shared service arrangements will be an issue here.

Further information about CRC may be found at <https://www.gov.uk/government/publications/community-right-to-challenge-statutory-guidance>

The CRC has yet to be used widely and has not been subject, at least to our knowledge, to any legal challenge in the courts. Furthermore in assessing the delivery of services both the Local Government Act 1972 ("1972 Act") and the General Power of Competence in the Localism Act 2011 include significant caveats to prevent the untrammelled devolution of powers and services. The legal requirements of specific pieces of legislation relating to specific services must also be taken into account.

Community Right to Bid

The Localism Act also enables community groups and town and parish councils to purchase assets of community value in their area. The principal council must keep a register of such assets and add to it at the request of a parish council or community group. Such assets must be used to further the social wellbeing or social interests of the community, or be capable of doing so in the future. There are various exemptions such as private homes and hotels.

When an asset on the register is proposed for sale the owner must tell the principal council and the process must be delayed for six weeks to allow community groups and town and parish councils to decide whether to bid. If they decide to do so they will have six months to find the funding and prepare a bid. This applies to private assets such as public houses and not just those in public ownership such as libraries or community centres. Further information can be found at

<http://mycommunityrights.org.uk/community-right-to-bid/>

Neighbourhood Planning

The Neighbourhood Planning process is as follows:

- A parish council or neighbourhood forum applies to the principal council to start the process and they will have to approve the area proposed for the plan and ensure that the areas for different plans fit together and make sense
- The neighbourhood will then work together with the principal authority and consult the local community to produce the Plan or a Development Order or both. The Plan must be consistent with local and national Planning policies and other laws. For example, it cannot be used to challenge a Local Development Plan that identifies the area as an area for growth. A Plan sets out general policies and a vision for the future of the area. A Development Order grants permission for new developments that people want to see go ahead
- An independent examiner will examine the Plan to see that it conforms to regulations. If they suggest significant changes then there may be further consultation with the local community
- A referendum will take place of all those in the community registered to vote. If 50% or more support the Plan then it will come into effect.

Further information can be found at

<http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/>

