

Report to: **Hub Committee**

Date: **1 February 2022**

Title: **Local Government Act 1972 section 109 - Kelly Parish Meeting**

Portfolio Area: **Leader of the Council – Cllr Jory**

Wards Affected: **Tamarside**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:

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### **Recommendation:**

1. That the Committee recommends to Council that the Head of Legal Services and Monitoring Officer is authorised to make an order under section 109 of the Local Government Act 1972 granting Kelly Parish Meeting, the power to consent under section 61F of the Town and Country Planning Act 1990 to the whole of its parish being included in the Milton Abbot, Chillaton and Kelly Neighbourhood Plan.

### **1. Executive summary**

- 1.1 As the local planning authority, the Council is responsible for overseeing neighbourhood planning. This includes providing advice and assistance to qualifying bodies; and designating neighbourhood areas.
- 1.2 When the Council agreed to include Kelly parish in the Milton Abbot, Chillaton and Kelly neighbourhood plan in 2014, it appears that it was assumed that a parish meeting had the same powers as a parish council. The Council therefore agreed to the application by Milton Abbot Grouped Parish Council for a neighbourhood plan that included the whole of the Parish Council's land and Kelly parish. The Examiner considering the draft plan has raised a question with the Council about the powers of the parish meeting.

- 1.3 The Head of Legal Services and Monitoring Officer has confirmed that a parish meeting does not have the same powers as a parish council. A parish meeting cannot be a qualifying body nor can it give consent to the parish being included in a neighbourhood plan being prepared by a parish council.
- 1.4 To overcome this, the Head of Legal Services and Monitoring Officer has advised that section 109 of the Local Government Act 1972 gives the Council the power, on an application being made by a parish meeting, to make an order conferring on a parish meeting any functions of a parish council. It is therefore proposed that the Hub Committee recommends Council to authorise the Head of Legal Services and Monitoring Officer to make an order granting Kelly Parish Meeting the power under section 61F of the Town and Country Planning Act 1990 to consent to the whole of its parish being included in the Milton Abbot, Chillaton and Kelly Neighbourhood Plan.

## 2. Background

- 2.1 **The Facts.** Kelly parish does not have a parish council and has a Parish Meeting.
- 2.2 In August 2014, Milton Abbot Grouped Parish Council applied to the Council to be designated as the Qualifying Body for the purposes of making a neighbourhood plan that included land within both the Parish Council and Kelly Parish Meeting areas.
- 2.3 On 7 October 2014, the Council designated the Milton Abbot Grouped Parish Council as the Qualifying Body and the combined area as the neighbourhood area (Min RC17 refers). Work on the neighbourhood plan began shortly afterwards, and the draft plan has reached the point at which the Examiner is about to issue his recommendations to the Council. The Examiner has however, queried the inclusion of the Kelly Parish Meeting area as parish meetings lack neighbourhood planning powers
- 2.4 **The Law.** The plan-making body for a neighbourhood plan is the "Qualifying Body". In parished areas, the qualifying body is the town or parish council and in a parish, only the parish council can be the qualifying body for a neighbourhood plan. Also, a parish council can act in relation to a neighbourhood area if the area consists of all or part of the area of the parish council and, with the consent of the relevant parish council, in relation to a neighbourhood area that includes the whole or part of that parish council's area.
- 2.5 While parish meetings are recognised as local government bodies or public authorities for a number of statutory purposes, they are not parish councils. Parish meetings therefore do not have the same range of local authority functions as parish councils. Accordingly, a parish meeting cannot be a qualifying body in its

own right, nor can it consent to land in its area being included in the neighbourhood plan of an adjoining parish council.

- 2.6 Where a parish meeting wants to do something that a parish council might do, but because of its status as a parish meeting, lacks the necessary legal powers, it may ask the district council to make an order under section 109 of the Local Government Act 1972, granting it the relevant parish council powers.
- 2.7 **The Application.** Kelly Parish Meeting has asked the Council to make an order under section 109 of the Local Government Act 1972, so that Kelly Parish Meeting is given the power under section 61F of the Town and Country Planning Act 1990 to consent to the whole of the parish being included in the Milton Abbot, Chillaton and Kelly Neighbourhood Plan.

### 3. Proposed order

- 3.1 The Council has a wide discretion to make an order under section 109 of the Local Government Act 1972. The proposed order would allow the Kelly Parish Meeting to consent to the parish being included in the neighbourhood plan being prepared by Milton Abbot Grouped Parish Council.

### 4. Risks of failure to make the Order

- 4.1 If the Committee was not minded to make the recommendation to Council, that the Head of Legal Services and Monitoring Officer makes the proposed order, or if Council was not to agree to the recommendation, it is highly likely that the Examiner would find that the draft neighbourhood plan did not meet the basic conditions. The draft neighbourhood plan would not therefore be able to be made.

### 5. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	These are set out in the main body of the report.
Financial implications to include reference to value for money	N	There are no financial implications.
Risk	Y	Paragraph 4 of the main body of the report explains the risks

Supporting Corporate Strategy	Y	Neighbourhood plans empower communities to think about what is best for their areas and how they may be enhanced. Supporting the development and adoption of neighbourhood plans is one of the key actions. The proposed order will allow the Milton Abbot Chillaton and Kelly Neighbourhood Plan to progress to the next stage.
Climate Change - Carbon / Biodiversity Impact	N	There are no climate change or biodiversity impacts.
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity	N	There are no equality and diversity implications.
Safeguarding	N	There are no safeguarding implications.
Community Safety, Crime and Disorder	N	There are no crime and disorder implications.
Health, Safety and Wellbeing	N	There are no health, safety or wellbeing implications.
Other implications		There are none.

### **Supporting Information**

#### **Appendices:**

There are none.

#### **Background Papers:**

Application from Kelly Parish Meeting for an order under section 109 of the Local Government Act 1972.