Neutral Citation Number: [2019] EWHC 998 (Admin)

Case No: CO/1087/2019
CO/1085/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/04/2019

Before:

THE HONOURABLE MR JUSTICE LEWIS

- -

Between:

R on the application of Britwell Parish Council	**Claimant**
- and -	
Slough Borough Council	**Defendant**
R on the application of Wexham Court Parish Council	**Claimant**
- and -	
Slough Borough Council	**Defendant**

- -
- -

Robin Green (instructed by **Wellers Hedleys Solicitors**) for the **First Claimant**
Robin Green (instructed by **NP Law**) for the **Second Claimant**
Peter Oldham Q.C. (instructed by **Slough Borough Council**) for the **Defendants**

Hearing date: 10 April 2019

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Approved Judgment

The Honourable Mr Justice Lewis:

INTRODUCTION

1. These are two claims for judicial review by two parish councils challenging the Slough Borough Council (Reorganisation of Community Governance) Order 2019 ("the Order"). That Order provides for the abolition of the parishes of Britwell, and Wexham Court and the winding up and dissolution of each of the two parish councils for those areas.

2. In essence, the two claimants, Britwell Parish Council and Wexham Court Parish Council, contend that the defendant, Slough Borough Council, which made the Order failed to have regard to relevant guidance. That required that there must, amongst other things, be clear and sustained local support for abolition of a parish council. The claimants contend that all the material before the defendant, including the consultation responses, responses from the parish councils and the results of local polls, showed that the majority of electors in the two parishes wished to retain, not abolish, the parish council. In those circumstances they contend that there was not clear and sustained local support for the abolition of the parish councils as required by the Guidance. They further contend that the defendant failed to have regard to the claimants' role as representative democratically elected bodies and that the decision was irrational. The two claims were heard together.

3. The Order came into force on 1 April 2019. Interim injunctions were granted in both cases by Murray J. preventing the Order from having effect in relation to each of the two parishes and parish councils pending the outcome of the application for permission and those injunctions have been continued pending determination of the claims for judicial review.

THE FACTUAL BACKGROUND

The 2013 Community Governance Review

4. Consideration of parish council arrangements in the borough of Slough date back to 2013. A report dated 26 November 2013 summarised the outcome of a community governance review which involved a consultation process and the holding of advisory polls in each of three parishes (this claim does not concern the third parish). In relation to Britwell, 190 letters in standard form had been received supporting the parish council, and 2 other letters were received. Representations were received from the parish council and the chairman of the Berkshire Association of Local Councils ("BALC") who supported retention of all the parish councils. In the local advisory poll, there was a 27% turnout. In response to the question "Do you support the option that Britwell Parish Council be abolished?" 57% voted yes and 43% voted no. The report recommended, and the defendant resolved, that the results of the advisory group and the representations made should be noted. The defendant resolved to note that the advisory poll had returned a majority in favour of the abolition of Britwell Parish Council and to test public opinion again in a further four years' time. In accordance with other recommendations in the review, the defendant also resolved to alter the boundaries of the parish, resulting in a smaller parish, and to reduce the number of parish councillors from 13 to 7 with effect from May 2014.

5. In relation to Wexham Court, eight responses had been received in response to the consultation, all supporting the retention of the parish council, together with representations from the parish council and from the chairman of BALC as described in the previous paragraph. In the local advisory poll, there was a 25.5% turnout. In response to the question "Do you support the option that Wexham Court Parish Council be abolished?" 45% voted yes and 55% voted no. The report recommended, and the defendant resolved, to note the written responses received in support of the parish council and to note that the advisory poll had returned a majority in favour of retaining Wexham Court Parish Council but reserved the right to test public opinion again in the future as the defendant still had concerns about the parish council's governance arrangements.

The 2018 Community Governance Review

6. In May 2018, the defendant resolved to carry out another community governance review of parish council arrangements in the borough of Slough. The terms of reference were approved by the defendant in June 2018 the material parts of which provide:

> **"Slough Borough Council**
>
> **Review of Community Governance Arrangements within the Borough of Slough**
>
> **Terms of Reference**
>
> **Introduction**
>
> Slough Borough Council is undertaking a Community Governance Review of the whole of the Slough Borough Council area in accordance with Part 4 Chapter 3 of the Local Government and Public Involvement in Health Act 2007.
>
> The Council is required to have regard to the Guidance on Community Governance Reviews issued by the Secretary of State for Communities and Local Government. This guidance was considered when drawing up the Terms of Reference (TOR).
>
> **What is a Community Governance Review**
>
> It is a review to consider one or more of the following:
>
> - Creating, merging, altering or abolishing parishes;
> - The naming of parishes and the style of new parishes;
> - The electoral arrangements for parishes (the ordinary year of election; council size, the number of councillors to be elected to the council, and parish warding), and

- Grouping parishes under a common parish council or de-grouping parishes

The Council is required to ensure that community governance within the area under review will be: reflective of the identities and interests of the community in that area; and is effective and convenient.

In doing so the community governance review is required to take into account:

The impact of community governance arrangements on community cohesion; and

The size, population and boundaries of a local community or parish.

The aim of the review is to consider and bring about improved community engagement, better local democracy and efficient, more effective and convenient delivery of local services and ensure electors across the whole Borough will be treated equitably and fairly.

The Council will also take into account any other arrangements (apart from those relating to parishes and their institutions) that have already been made, or that could be made, for the purposes of community representation or engagement.

Why undertake this Community Governance Review

The Council carried out a Community Governance Review in 2013. The Review resulted in:

changes to the Boundary of **Britwell Parish Council** and a consequent reduction in the number of Councillors from 13 to 7;

the Council noting that the advisory poll (undertaken as part of the CGR) returned a majority in favour of abolition of the Parish Council and agreed that public opinion be tested again in a further four years' time.

the Council noting that the advisory poll (undertaken as part of the CGR) returned a majority in favour of the retention of **Wexham Court Parish Council** and reserving the right to test public opinion again in the future if it still has concerns about the Parish Council's governance arrangements.

the Council reserving the right to test public opinion in an advisory postal poll at or after the next parish council elections in 2015 if it is not satisfied that **Colnbrook with Poyle Parish Council** is engaging more widely with local people.

> As the Council is committed to undertaking a further advisory poll to test public opinion on the future of Britwell Parish Council and has reserved the right to test public opinion by way of an advisory poll in Colnbrook with Poyle Parish Council and Wexham Court Parish Council as outlined above it has agreed to take the opportunity to commence a further CGR.
>
> The Council believes that parish councils play an important role in terms of community empowerment at the local level and wants to ensure that parish governance within the Borough continues to be robust, representative and enabled to meet new challenges. Furthermore, it wants to ensure that there is clarity and transparency to the areas that parish councils represent and that the electoral arrangements of parishes are appropriate, equitable and readily understood by their electorate.
>
> Areas to be reviewed
>
> Britwell
>
> Wexham Court
>
> Colnbrook with Poyle
>
> *unparished areas
>
> *The review will focus on the parished areas of the Borough but will also consider other forms of community representation which local people may have set up in the Borough and which help make a distinct contribution to the community such as residents' associations, community forums, neighbourhood working groups, tenant management organisations etc."

7. The first stage involved opportunities for members of the public and others to make representations. Submissions were made by both claimants. No representations were received in relation to Britwell. Four representations were received in relation to Wexham Court all of which supported the retention of the parish council. It appears that further representations were received at a later stage as a report in November 2018 noted 16 representations in respect of Britwell.

8. In September 2018, the defendant considered a report. That report said that:

> "8.3 One way of testing local support for or against the abolition of a Parish Council would be to consult local government electors for each of the parish areas by way of a poll and, in order to meet statutory requirements also to consult the Parish Councils and other persons or bodies which appear to the Council to have an interest in the review. The Council conducted postal advisory polls to test support for and against the abolition of Britwell and Wexham Court Parish Councils as part of the 2013 Community Governance Review.
>
> 8.4….. The outcome of the poll or survey cannot be binding on the Council as it is required by law to consult widely and consider representations from parish councils and

other persons or bodies which appear to have an interest in the review. The poll/survey would therefore be advisory….".

9. The defendant resolved to hold advisory postal surveys in each parish and those were duly held. A report on the community governance review was then considered at a meeting of the Council in November 2018. The report said this:

> "With regard to the dissolution of a Parish Council, the Council needs to be satisfied on the following points in each case:
>
> a) Whether there is clear evidence of local support for the abolition of the parish and the dissolution of the parish council;
>
> b) Whether such support has been maintained over a sufficient length of time (i.e. that the case for abolition has not been generated in the short term by an unpopular decision of the council, or a particular year's parish precept etc);
>
> c) Whether the support is sufficiently informed (i.e. that a properly constituted parish council has had an opportunity to exercise parish functions and that local people therefore have had an opportunity to assess whether the parish council can contribute positively to local quality of life); and
>
> d) Whether it can be demonstrated that suitable alternative arrangements are in place for engaging the local community"

10. In relation to Britwell Parish Council, the report noted that in 2013 the review group had been sufficiently concerned about the effectiveness of the parish that it had consulted electors on its abolition and the majority supported abolition and gave the turnout and voting figures for 2013. The report noted that the review group expressed concern in 2018 that the parish had not made any significant improvements in the way it worked, other than removing its direct involvement in an enterprise called the Chicken Ranch bar where there had been fraud on the part of those involved, and that it had failed to bring the community together despite being a smaller parish.

11. The report noted the number of written representations relating to Britwell (16, nine in favour of abolition and seven in favour of retention of the parish council). It summarised the views of the parish council and its argument that abolition would result in a democratic deficit in the area. It noted the result of the poll. The turnout was 30%. In response to the question "Do you support the option that Britwell Parish Council be abolished?" 48% voted yes and 52% voted no. In other words, a majority of those voting in the poll favoured retaining the parish council.

12. The report then sets out the observations made by the review group in the following terms.

> "**Consideration by the Review Group**

5.14 The review group considered all the above at its meeting on 13th November and made the following observations:

- Some people may have voted in the postal poll as well as submitting an on line comment; it could equally be that a number of the responses were additional votes to the poll and the table in 5.13;

- The poll results indicated support for the retention of the parish, but taken alongside the general comments received, the outcome was balanced with more or less equal support for abolition and retention. Turnout for the Poll at 30.14 % was low and there had only been 16 other submissions on the Council's recommendations indicating an overall general lack of interest in the future of the parish;

- The electorate of the parish had, since 2014, consisted only of those people living in close proximity to the parish council buildings and community grounds and these people were therefore more likely to use the facilities than had been the case when the council was larger. Despite this, the poll results did not demonstrate overwhelming support for the parish council – there was still significant continuing support from the electorate for its abolition;

- Significant support for abolition has been evident since 2013, when the first poll was undertaken;

- A reduction in hiring charges for the hall appeared to be the only benefit that parish residents received for their precept making it questionable value for money for the majority of residents. A resident would have to hire the hall on several occasions per annum to be better off than a non-precept payer;

- One of the respondents indicated particularly that the parish precept of £66 per annum for a Band D property did not represent good value for money. Many residents of the Britwell estate are on low incomes and costs to householders are therefore a particular concern;

- In 2013 the parish council advised the review group that it planned to reduce the precept, but this has not happened;

- No evidence was provided that the parish council was likely to make and sustain any significant improvements

in the way it works or succeed in bringing the community together. The majority of the activity and events detailed in the parish council's submission as reasons for its continued existence were provided by community groups themselves or the Borough Council;

- The parish council had used information fliers in the past to communicate with residents, but now mainly relied on word of mouth, question time at (poorly attended) council meetings and the website. However the website was out of date and the council had no immediate plans to update it;

- The parish council had ceased its direct involvement in running the Chicken Ranch bar, but no other improvements in the way it worked;

- There was no evidence that the reduction is size of the parish council had resulted in it operating in a more strategic, effective or focused way or delivering improved community engagement, better local democracy and more effective and convenient local services. It was noted that a serious fraud had consumed much of the council's attention immediately after the last elections, but there was no evidence that during the significant period of time which has elapsed since then any improvement has been made;

- The fraud by parish staff resulted in a loss of public money."

13. The report then considered the observations of the review group on matters to do with property, rights and liabilities in the event that Britwell Parish Council were abolished. It noted the recommendations that the parish council be abolished.

14. In relation to Wexham Court Parish Council, the report noted that in 2013, local electors had been consulted in a poll and noted on a turnout of 26.5%, 45% favoured abolition and 55% favoured retention of the parish council but that the defendant had reserved the right to test public opinion again. It analysed the 4 written representations received all which supported retention of the parish council.

15. The report recorded the result of the advisory postal poll. The turnout was just under 26%. In response to the question "Do you support the option that Wexham Court Parish Council be abolished?" 44% voted yes and 56% voted no. In other words, a majority of those voting in the poll favoured retaining the parish council, as had been the case in 2013.

16. The report then sets out the observations made by the review group in the following terms.

"Consideration by the Review Group

5.31 The review group considered all the above at its meeting on 13th November and made the following observations:

- the audit of the governance arrangements was intended to ensure that the money received via the precept was being spent in line with delegated authority and to give an assurance that the precept collected for the parish was being used as intended;

- the Auditor's conclusion was that the control framework in place at the parish requires significant improvement and issues have been identified where immediate management action was necessary. Particular concerns were highlighted over the pre-signing of cheques, uploading of confidential meeting minutes to the internet, the need for a clear audit trail to identify decisions being made by the parish council, lack of policies and procedures to support investment decisions and the use of purchase orders; the parish council had been urged in 2013 to address the identified governance issues but significant control weaknesses remain;

- the parish council had also been urged in 2013 to seek professional advice on employment matters. Whilst it had sought advice from an HR consultant from the Berkshire Association of Local Councils and was waiting for a review of job roles and structure to be completed, no formal contracts or job roles for staff were in place and the Auditor been unable to confirm that employees were being paid the correct remuneration or sufficient overtime rates, which puts the council at significant risk;

- the Working Group felt strongly that based on the Audit report that the Parish Council's governance arrangements were not sound and that it had failed to address these failings over a number of years. The Parish Council had not been able to demonstrate efficient and robust use of public funds.

- the poll results indicated support for the retention of the parish council, but the turnout was low at 25% and there had only been four other responses to the consultation indicating an overall general lack of interest in it. Of the 25% of people who did vote over 400 supported its abolition;

- there was little support for changes to the parish boundary, size or name;

- concerns had been identified about relationships between parish councillors and staff, the appointment and management of staff, financial management, procurement arrangements and lettings policies. All these suggested poor governance and inefficiency;

- in the event of abolition the parish facilities could be run equally well by the borough council. The parish hall could be developed to provide a community hub, opening up to the wider local community and encouraging its use for community functions;

- Should the parish council be abolished, its property, rights and liabilities transfer to, and vest in, the borough council. In this event the borough council could provide support to former parish council staff to secure other employment or redeployment opportunities."

17. The conclusions in the report itself were set out at section 6 in the following terms:

"**6 <u>Conclusion</u>**

6.1 The review group was concerned to ensure that local government in Slough embodies the highest standards of governance and probity. It was very concerned by the shortcomings identified above, which it felt reflected badly on the whole sector.

6.2 Prior to formal orders being made, the group has asked that the Director of Finance & Resources bring to Council a report to include how the facilities and services provided or supported by Britwell & Wexham Parish Councils will be supported and developed in the event of their abolition.

6.3 This will enable members to judge the review group's recommendations against its aim of bringing about improved community engagement, better local democracy, more effective and convenient local services and equitable treatment of electors across the whole Borough.

6.4 Parish councils can play an important role in terms of community empowerment but need both robust governance and to be able to demonstrate value for money to their residents.

6.5 Whilst Government's guidance states that it 'expects to see a trend in the creation, rather than the abolition of parishes' and that 'the abolition of parishes should not be undertaken unless clearly justified' the review group considers that the recommendations to abolish Britwell and Wexham Court

> Parish Councils are clearly justified for the reasons set out in the body of this report.
>
> 6.6 The review group has given careful consideration to the responses to the consultation undertaken as part of the Review and the recommendations it has made in respect of the existing three parish councils are based on the evidence received."

18. The report recommended that, in relation to both Britwell and Wexham Court Parish Councils, the results of the advisory poll and the representations be noted and that the parish councils be abolished with effect from 1 April 2019.

19. The report was considered at a meeting of the defendant on 27 November 2018 at which representatives of both claimants spoke. A report prepared for a later meeting on 18 December 2018 noted that the November 2018 meeting had considered the earlier report and resolved to fix an extraordinary meeting of the defendant on 18 December 2018 to determine the abolition of each of the two parish councils. The report for the December 2018 meeting noted that the defendant had requested a further report on how facilities and services provided or supported by the parish councils would be supported and developed in the event of abolition. The December 2018 report said at paragraph 1.9:

> "Whilst Government's guidance states that it "expects to see a trend in the creation, rather than the abolition of parishes" and that "the abolition of parishes should not be undertaken unless clearly justified" it is believed that the recommendations to abolish Britwell and Wexham Court Parish Councils are clearly justified for the reasons set out in the report".

20. The December 2018 report then considers questions of community engagement and expresses the view that there is a sufficient opportunity for such engagement in each of the parish areas so that abolition was justified and a new parish council was not required. It then dealt in detail with specific services. The defendant resolved to abolish Britwell Parish Council and Wexham Court Parish Council.

The Order

21. The Order was made on 15 January 2019. It provided that it would come into effect on 1 April 2019. The material provisions are articles 4 and 5 which are in the following terms:

> **"Dissolution of Parish Council for the parishes of Wexham Court and Britwell**
>
> 4. The parish councils for the parishes of Wexham Court and Britwell shall be wound up and dissolved.
>
> **Abolition of the parishes of Wexham Court and Britwell**
>
> 5. The parishes of Wexham Court and Britwell as shown on the Maps referred to in Article 2 shall be abolished and become part of the unparished area of the Borough."

22. An order making various amendments was made on 22 January 2019. Those amendments are not material to these claims.

23. As indicated, interim orders have been made providing that the Order is not to come into effect pending the outcome of the judicial review. One of the consequences of this is that the defendant have had to make arrangements for holding elections to each of the two parish councils in May 2019.

THE LEGAL FRAMEWORK

The Legislation

24. Reviews of parishes and parish councils are governed by chapter 3 of Part 4 of the Local Government and Public Involvement in Health Act 2007 ("the Act"). Section 79 of the Act provides that a community governance review is a review of the relevant area, carried out in accordance with the provisions of Chapter 3 and the terms of reference of the review, with a view to making recommendations of the sort referred to in sections 87 to 92 of the Act. Those include creating new parishes or making recommendations in relation, as here, to existing parishes. Section 88 provides, so far as material, that:

> **"88 Existing parishes under review**
>
> (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."

25. Section 94 of the Act imposed limits on the recommendations that may be made. If a parish exists or is created, and has 1,000 or more local electors, the review must recommend that the parish have a council. If, however, the council proposes to abolish both the parish, and the parish council, then that provision is not applicable.

26. There are certain procedural duties on a local authority undertaking a review but, subject to those duties, it is for the local authority to decide how to undertake the review. Section 93 of the Act provides that:

> **"93 Duties when undertaking a review**
>
> (1) The principal council must comply with the duties in this section when undertaking a community governance review.
>
> (2) But, subject to those duties, it is for the principal council to decide how to undertake the review.
>
> (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) reflects 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.
>
> (7) As soon as practicable after making any recommendations, the principal council must–
>
> (a) publish the recommendations; and
>
> (b) take such steps as it considers sufficient to secure that persons who may be interested in the review are informed of those recommendations.
>
> (8) The principal council must conclude the review within the period of 12 months starting with the day on which the council receives the community governance petition or community governance application."

27. Section 100 of the Act is critical to these two claims and provides as follows:

> "100 Guidance

(1) The Secretary of State may issue guidance about undertaking community governance reviews.

(2) The Electoral Commission may issue guidance about the making of recommendations under sections 89(2) or 90(2) (electoral arrangements for parish councils) or 92 (consequential recommendations about county, district or London borough councils).

(3) The Secretary of State may issue guidance about giving effect to recommendations made in community governance reviews.

(4) A principal council must have regard to guidance issued under this section."

28. Following the community governance review, there are obligations on a local authority to publish the recommendations and its decision on those recommendations (see section 96 of the Act). If the local authority decides to give effect to recommendations it may make an order for that purpose: see sections 86 and 98 of the Act.

The Guidance

29. The Secretary of State for Communities and Local Government and the Local Government Boundary Commission for England have given guidance on community governance reviews in England ("the Guidance"). The Guidance should be read fairly, and in its entirety. For present purposes, I set out below the parts of the Guidance that are most material to these two claims. Section 3 of the Guidance deals with making and implementing recommendations in community governance reviews and notes at paragraph 50 that the "views of local communities and inhabitants are of central importance". Paragraph 59 notes that parishes should reflect distinctive and recognisable communities of interest, with their own sense of identity, and that "the feeling of local community and the wishes of local inhabitants are the primary consideration". Specific guidance is given at paragraphs 117 to 124 of the Guidance on (1) the abolition of parishes and (2) dissolving parish councils in the following terms (footnotes omitted):

"Abolishing parishes, and dissolving parish councils

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). Regulations7 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. eight 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.

122 In future, principal councils will wish to consider the sort of principles identified above in arriving at their decisions on whether or not to abolish a parish council. In doing so, they will be aware that decisions about community governance arrangements, including decisions for the abolition of a parish council, may attract a challenge by way of judicial review.

123 The 2006 white paper underlined the Government's commitment to parish councils as an established and valued form of neighbourhood democracy with an important role to play in both rural, and increasingly urban, areas.

124 Section 10 of the Local Government Act 1972 makes provision for the dissolution of parish councils in parishes with very low populations, but not for the de-parishing of the area. Recommendations for the dissolution of a parish council which is not in this position are undesirable, unless associated either with boundary changes which amalgamate parishes or divide a parish or with plans for a parish to be grouped with others under a common parish council (see paragraphs 112 to 115). Recommendations for changing a parish area (or part of a parish area) into an unparished area are also undesirable unless that area is amalgamated with an existing unparished urban area."

THE ISSUES

30. Against that background, and in light of the grounds of claim and the written and oral submissions of the parties, the issues in the present claims can be conveniently summarised in the following way:

(1) Did the defendant fail properly to interpret and have regard to the Guidance, and paragraph 120 in particular, in considering whether "there was clear and sustained local support" for the abolition of the two parish councils who are claimants in these claims?;

(2) Did the defendant fail to have regard to the claimants' role as democratically elected representative bodies?

(3) Did the defendant act irrationally in concluding that each of the two parishes should be abolished and the two parish councils dissolved?

THE FIRST ISSUE – THE GUIDANCE

31. Mr Green, on behalf of the claimants, contends that on the material before the defendant, there was no basis for concluding in the case of either claimant that there was clear and sustained local support for the abolition of the parish council. Mr Green accepted that there was no obligation on the defendant to conduct a poll but in the circumstances of this case they had done so. In the case of Wexham Court, all the material before the defendant demonstrated that there was a majority in favour of retaining the parish council. The two postal polls that the defendant conducted demonstrated a majority in favour of retaining the parish council. The other representations made also supported retention. In those circumstances, Mr Green submitted that the defendant erred in finding that there was "clear and sustained local support" for the abolition of Wexham Court parish council and erred in concluding that the criteria in paragraph 120 of the Guidance were satisfied. Similarly, the most recent postal vote indicated a majority in favour of retaining Britwell parish council and the representations were evenly balanced. In those circumstances, Mr Green again submitted that the defendant erred in finding that there was clear and sustained local support for the abolition of Britwell parish council within the meaning of paragraph 120 of the Guidance.

32. Mr Oldham Q.C., for the defendant, submitted that paragraph 120 requires only that there be an evidential basis of clear and sustained local support for abolition. There is no requirement to hold a poll, still less a requirement that a majority of voters at such a poll favour abolition. Mr Oldham submitted that, provided there was some material before the defendant upon which it could rationally conclude that there was clear and sustained local support, it was acting in accordance with the guidance. Only if the level of support was so low that it could not rationally be considered clear and sustained local support would there be a departure from the Guidance. Alternatively, if the Order did involve departing from the Guidance, the defendant was entitled to do so if there were clear reasons to do so and the material in the reports to the defendant provided such clear reasons: see, in particular, *R (Khatun) v Newham London Borough Council* [2004] EWCA Civ. 55 at para 47, and *R (Jewish Human Rights Watch) v Leicestershire City Council* [2018] EWCA Civ. 15 at para. 34

Discussion

33. A local authority conducting a community governance review is required to consult local government electors for the area under review and any other person or body which appears to the local authority conducting the review to have an interest in the review: see section 93 of the Act. The local authority "must have regard" to the Guidance: see section 100 of the Act. In relation to the Guidance, the local authority must proceed on a proper understanding of the Guidance. It must take the Guidance into account and act in accordance with the Guidance unless they give clear reason for departing from it: see *R (Khatun) v London Borough of Newham* [2004] EWCA Civ. 55 at 47. The defendant here did take account of the Guidance: it was drawn to their attention and material parts referred to in the reports to the defendant. The question is whether, as the defendant submits, the defendant also followed the Guidance in the sense that the decision to make the Order was consistent with the Guidance properly interpreted.

34. The starting point is to consider the relevant parts of the Guidance to determine its meaning. The Guidance should be read fairly, and as a whole, and in context. The Guidance is not to be construed as if it were a statute or a contract but its provisions are nevertheless intended to, and do, have legal meaning and are intended to guide the decision-maker as to how to exercise its statutory powers: see, by analogy, the role a development plan in the field of planning law, *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13 at paras. 17 and 19.

35. The statutory context is that the defendant is undertaking a review of community governance, and in particular, the continued existence of certain parishes and parish councils. Its duty is to have regard to the need to ensure that community governance within the area reflects the needs and interests of the community in that area and is effective and convenient: see section 93(4) of the Act. The defendant must consult local government electors and any other person or body which appears to the authority carrying out the review to have an interest in it: see section 93(3) of the Act. That is the context in which the Guidance is to be interpreted.

36. In the present case, the focus of the reports to the defendant and argument before this court, concerned the decision to abolish, or wind up, the two parish councils although the Order also involves abolishing the parishes themselves. The material part of the Guidance is contained in paragraph 120 of the Guidance. The opening words of the paragraph recognise that a course of action involving abolition of a parish council is exceptional. The paragraph notes that the defendant has to consider local opinion, including that of parish councillors and local electors (as is provided for by section 93 of the Act itself). The critical sentence is this:

> "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."

37. That sentence recognises that there are, in effect, two criteria or considerations, to be considered before such an exceptional course as abolition is undertaken. First, there needs to be evidence that the abolition of the parish council was justified. That involves consideration of factors which would justify such a course of action such as, for example a failure on the part of the parish council to provide effective or convenient government, or to provide the benefits associated with parish councils. The second part of the sentence is considering if there is evidence of "clear and sustained local support" for abolition. That is looking to see whether, on all the

material available to the defendant, those in the locality have, over a sustained period of time, supported the abolition of the parish council.

38. I accept that a local authority carrying out a review does not have to conduct a poll and there is no requirement that a majority of local electors at a poll have voted to abolish the parish council. The local authority carrying out the review may consult electors in a variety of ways. It will also have consulted other persons and bodies appearing to it have an interest. That material may lead a local authority to conclude that there is clear and sustained local support for abolition. Even if a local authority conducts a poll, it would not necessarily be the case that the results of that vote would be definitive. The council would still have to consider all other material available to it which indicates whether there is local support for abolition. It may have to consider the extent to which that poll is a reliable indicator of local opinion (for example, given the size of the turnout) together with all the other information available to the council about the views of electors and those interested in order to decide if there was clear and sustained support for the abolition of the parish council.

39. The defendant in the present case, however, has taken the view that provided a number of local people support abolition (and provided that the number is not so small that it would be irrational to regard it as amounting to clear and sustained support) that is sufficient to satisfy paragraph 120 of the Guidance irrespective of whether, overall, local opinion favours retention not abolition of the parish council. In the case of Wexham Court, for example, all of the representations received in 2013 (albeit a small number) supported the retention of the parish council. The poll carried out in 2013 showed (on a turnout of 27%) that 45% of those voting favoured abolition and 55% favoured retention of the parish council. On the 2018 review again all (of the small number) of representations favoured retention as did the representations from the parish council and BALC. The poll (on a turnout of 26%) showed 44% supported abolition and 56% favoured retention. The defendant does not suggest that there is other evidence indicating the levels of support of local people.

40. The defendant was, however, of the view that the Guidance would be satisfied in relation to Wexham Court if a significant proportion of the population supported abolition. The defendant was not seeking to establish whether local opinion, over a sustained period, broadly supported abolition. In other words, the defendant interpreted the Guidance as requiring that a significant proportion of people in Wexham Court supported abolition (even, it seems, if that were a minority of local people on the information available to the defendant and even if a majority, or put differently, local opinion overall supported the retention of the parish council). In my judgment, paragraph 120 of the Guidance is not seeking to establish whether a minimum threshold of support for abolition can be established. The Guidance is seeking to establish whether, over a sustained period, local opinion broadly supports the abolition of the parish council. That conclusion is reinforced by, but not dependent upon, the opening words which indicate that it is only exceptionally that such a course of action would be appropriate. That is why there must be clear evidence that the abolition is justified and clear and sustained local support for abolition.

41. In my judgment, therefore, the defendant erred in its approach to the interpretation of paragraph 120 of the Guidance. It was influenced by the erroneous view that the Guidance would be satisfied, and abolition wold be consistent with the Guidance, if abolition was justified and if there was a significant, or sizable, number of people

(even if it were thought to be a minority of local government electors as a whole) who supported abolition. In those circumstances, the decision to make the Order was flawed. As no distinction was sought to be made between the abolition of the parish of Wexham Court and the parish council, the Order as a whole is invalid so far as Wexham Court is concerned.

42. The defendant submitted that it could depart from the Guidance if it had clear reasons to do so. That is correct. But in the present case, the defendant was not seeking to depart from the Guidance. It, erroneously, thought that the decision and the Order followed, in the sense that they were consistent with, the Guidance. As its decision, and therefore the Order, was flawed, the Order will need to be quashed and the defendant can, if it wishes, consider matters again. It could if, it had clear reasons for doing so, depart from the Guidance. It is, however, not appropriate to speculate as to whether it would decide to make the same Order if it appreciated that it had misinterpreted paragraph 120 of the Guidance and if it had to decide that, even if it considered that the Guidance properly interpreted was not satisfied, nevertheless the circumstances were such that it should abolish the parish council in any event.

43. The position in relation to Britwell parish council is more mixed in terms of the evidence. The 2013 poll did return a majority in favour of abolition (albeit that the boundaries of the parish were different then). There were representations in favour (including 190 standard term letters) and it would have been for the defendant to assess from all that information whether there was clear and sustained local support for abolition. In fact, the defendant did not abolish the parish council in 2013 but decided to test public opinion in four years' time.

44. In 2018, of the 16 written representations received nine were in favour of abolition and seven were in favour of retention of the parish council. The parish council and BALC favoured retention. The poll showed that, on a turn out of 30%, 48% favoured abolishing and 52% favoured retaining the parish council. Again, the defendant does not suggest that there is other evidence indicating the levels of support of local people.

45. It is clear from the report that, at most, the authors considered that the poll showed that support for abolition and retention and retention was more or less equal, and that the turnout, and low level of written representations, indicated an overall general lack of interest in the future of the parish. The report said that "the poll results did not demonstrate overwhelming support for the parish council – there was still significant continuing support from the electorate for its abolition". Contrary to the submissions of Mr Green for the claimants, I do not read this as indicating that the defendant substituted a different test from that set out in the Guidance, namely that the defendant were applying a test of whether there was overwhelming support for retention. Rather, it was saying that there was still significant and continuing support for abolition. Read fairly, that seems to be saying that a significant level of support for abolition (even if perhaps less than majority, or overall, support) was sufficient (particularly in the light of what the authors assessed as a general lack of interest in the future of the parish). That still indicates, however, that what the defendant was asking was whether there was a significant, or sizable, number of people who supported abolition. As indicated above, however, in my judgment, paragraph 120 of the Guidance is not seeking to establish whether a minimum threshold of support for abolition can be established. The Guidance is seeking to establish whether, over a

sustained period, local opinion broadly supports the abolition of the parish council. The defendant did need to address that issue in order to determine whether the Guidance was satisfied. It did not do so and its decision to make the Order was also flawed in relation to Britwell parish council. In the light of that, the Order will need to be set aside. The defendant will be able to reconsider the matter to determine whether, on the material before it, it can really be said that the information demonstrates clear and sustained local support, in the way defined above, or, if not whether, there are good reasons for departing from the Guidance.

THE SECOND AND THIRD GROUNDS – RELEVANT CONSIDERATIONS AND IRRATIONALITY

46. In light of the conclusions set out above, the second and third grounds of challenge can be dealt with relatively briefly. There is no basis for concluding that the defendant failed to have regard to the claimants' role as democratically elected representative bodies. The terms of reference of the review referred to the aim of the review being, amongst other things, to consider and bring about better local democracy and also said that the defendant would take into account any other arrangements that have been, or could be made, for the purposes of community representation or engagement. They further noted that the defendant believed that parish councils played an important role in terms of community empowerment at the local level. The November 2018 report noted expressly that "the parish argued that its abolition would result in a democratic deficit". The defendant asked, at its November 2018 meeting, for a further report which, amongst other matters, would enable members to judge the recommendations for abolition against the review's aim of bringing about improved community engagement and better local democracy. The December 2018 report said that the Guidance points out the benefits of a parish council in terms of community engagement and the development of communities. It said that the circumstances set out in the November 2018 report did set out sufficient opportunity for community engagement in each of the areas and set out those opportunities. In relation to each parish area, there were regular borough councillor surgeries, community groups and a police community forum. In relation to Britwell, there were also a northern neighbourhood forum and a Britwell neighbourhood action group. In Wexham Court, there was also a resident's association. The defendant did, on the material, take account of the claimants' role as democratically elected, representative bodies and considered what other options for ensuring participation could be provided. Ground 2 in each of the claims is not therefore made out on the evidence.

47. The third ground of challenge contends that the decision to abolish the parishes and dissolve the parish councils was irrational. It is neither necessary, nor sensible, to express a view on that matter. It is not necessary as the decision to make the Order was materially influenced by a misinterpretation or misreading of paragraph 120 of the Guidance and must be quashed for that reason. It would not be sensible to express a view as the defendant will now need to consider the matter afresh. It will need to consider whether or not the Guidance, properly interpreted, is satisfied and, if not, whether it wishes to depart from the Guidance because it considers that there are clear reasons for doing so. It is far more sensible to let the defendant reconsider the matter, if it wishes to do so, in the light of this judgment and then, if any further proceedings were instituted in relation to any subsequent decision to make a reorganisation order,

to assess the lawfulness of any such decision on the basis of the reasoning relevant to that decision.

CONCLUSION

48. The defendant misinterpreted paragraph 120 of the Guidance and, as a result, erred in concluding that its decision to make the Order was consistent with the Guidance. In those circumstances, as the decision to make the Order was materially influenced by that legal error, the Order must be quashed. For that reason, these two claims for judicial review succeed.