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For the attention of Rory McKenna
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16 November 2017

By Email: Rory.Mckenna@3csharredservices.org

Dear Sirs

Community Governance Review for Over and Willingham Parishes
Our Client: Barry Papworth

1. Thank you for your email of 7 November 2017, in which you advised that the Monitoring Officer has decided to send this matter back to the Civic Affairs Committee for reconsideration. Thank you also for confirming that an updated report will be prepared and circulated prior to Civic Affairs Committee.
2. We are pleased that the matter is to be reconsidered in this way. As you will be aware, my client shared the concerns of Willingham Parish Council as to the lawfulness of the original decision by the Civic Affairs Committee, as communicated in their letter to the Chief Executive dated 23 October 2017. The Civic Affairs Committee's recommendation was substantively and procedurally flawed, and it would have been wholly inappropriate for the Council to take a final view on whether to accept, reject or modify the Committee's recommendation until those defects had been remedied.
3. Given the Monitoring Officer's decision, there is indeed an opportunity to remedy those defects. However, it is self-evidently essential that none of those defects are repeated in any fresh consideration of the issue. The purpose of this letter is therefore to emphasise some of the points which the new report to committee will have to address, in order to ensure that members are not under any misapprehension as to the matters which must be considered. We would be grateful for your confirmation that you will draw this letter to the attention of those responsible for the preparation of the report.

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4. As the Committee is well aware, the duty to undertake the present Community Governance Review (“**CGR**”) arose following the Council’s receipt of the community governance petition initiated by our client, Mr Papworth. Mr Papworth is the owner of Highgate Business Park, a local business hub of considerable standing. It has been in operation for 22 years, and is home to a diverse group of around twenty local businesses. Mr Papworth owns and operates Highgate Country Stores from the site; other businesses on site include a Volkswagen workshop, Willingham Country Butchers, Cambridge Joinery, a wedding supply company, a hair and beauty salon, two gyms, a property management company, a catering company, and a café. Highgate Business Park is an important facility for small businesses operating in a predominantly rural location. In turn, these businesses provide jobs and services for the local community.
5. Highgate Business Park is located immediately to the west of the existing boundary between Over and Willingham parishes. The location of that boundary means that the business park directly abuts the settlement boundary of Willingham village. By contrast, there are approximately 1 ½ miles of open countryside between the business park and the centre of Over village. The result is that whilst geographically close to Willingham village, Highgate Business Park falls just within the boundary of Over parish. This causes considerable inconvenience to the businesses which operate from the business park, who report that their existing and potential customers are regularly confused by the disparity between the park’s geographical location and its official address. This has obvious and serious implications for the profitability of running a business from the Highgate Business Park, with potential knock-on effects for the availability of jobs and services within the local area.
6. On 8 July 2016, our client delivered the petition asking the Council to review the boundary between Over and Willingham parishes, with a view to moving it to one of two potential locations. This petition, which was signed by some 400 local government electors, exceeded the 7.5% threshold provided for by section 80(3)(c) of the Local Government and Public Involvement in Health Act 2007 (“**the Act**”). Under section 79(2) of the Act, the Council was required to conduct the CGR in accordance with Chapter 3 of the Act, and the terms of reference of the review.
7. Those terms of reference were published on the Council’s website on 31 January 2017. They were also available in hard copy from a number of locations. Local briefings on the CGR were given in both Over and Willingham parishes. A public consultation on the CGR ran between

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21 February and 16 May 2017. During that period, a letter was sent to every household and business within Over and Willingham parishes, notifying them of the consultation and providing details on how to respond. A total of 244 responses were received online or by post. The majority of respondents supported moving the boundary to one or other of the locations identified by the CGR.

8. On 28 September 2017, the Civic Affairs Committee resolved to recommend to Council that the boundary between Over and Willingham parishes should not be changed. In reaching that decision:
 - a. the Committee misunderstood their role, and proceeded on the basis that they could not decide on an alternative boundary to that which had been proposed;
 - b. the Committee departed from the requirement on them to comply with their statutory duties and terms of reference, which each required it to have regard to the identity and interests of the communities affected, as well as the effectiveness and convenience of community governance under the existing and proposed boundaries, and to take into account the representations received in connection with the CGR; and
 - c. the Committee acted in a procedurally unfair manner, in that a Councillor with a disclosable pecuniary interest in land affected by the boundary dispute was improperly permitted to participate in the debate which preceded the vote.
9. It is essential that these defects now be remedied. We therefore request that the Civic Affairs Committee's reconsideration be undertaken in a manner that is consistent with the statutory regime governing CGRs and the terms of reference, and which fully takes into account representations received, and which is procedurally fair. We set out our concerns on each of those points below, but it is appropriate to start by drawing your attention to the apparent misdirection in law that the Committee gave themselves concerning their power to consider an alternative boundary change to that which had been proposed in the petition.

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A. The possibility of an alternative boundary change

10. We note from the draft minutes of the Committee's meeting on 28 September 2017 that there was discussion by Members of the Committee as to the proposed new boundary line, and that *"It was suggested by Members of the Committee that the proposed boundary change did not need to include the land to the south of Highgate Business Park."* It is further recorded that you (entirely correctly) advised the Committee that it could suggest an alternative boundary.
11. At least one member of the Committee made the point more explicitly, observing that *"The proposed change would incorporate a large amount of unoccupied land into the parish of Willingham, which was opposed by Over Parish Council."* There was a further suggestion that *"The matter should be returned back to the two parish councils in the hope that a compromise solution could be reached"*. In the light of those observations, it is recorded that *"The Committee were supportive of the suggestion that the two parish councils should work together to attempt to agree a boundary change"* (underlining added). Logically such discussions would take place before any decision is made by the Civic Affairs Committee to see if any agreement can be reached.
12. It is then recorded that it was noted that a valid petition had been submitted to the Council and that a consultation had been carried out. However, it then appears that the Committee concluded that they *"were now required to make a recommendation to full Council"*. They did so, recommending no change to the existing boundary because *"The suggested boundary change included a large amount of unpopulated land that was unnecessary to resolve the stated anomaly."*
13. The Committee's perception that it was bound to confine its recommendation to the boundaries proposed in Mr Papworth's petition (and which had been consulted upon) was incorrect as a matter of law. To the contrary, as you had correctly advised them, it was open to them to suggest an alternative boundary omitting the unoccupied to the full Council, having fully considered the representations made. If (as appears to be the case) they were supportive of the idea that two parish councils should seek to agree such a change, it was open to them to defer consideration in order to allow an opportunity to do so.
14. The mere fact that a revised boundary line had not been consulted upon was not a bar to such a course. A revised boundary line excluding the unoccupied land would be a more modest change than that which had been proposed, but would not include any new land which had not

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been the subject of consultation. Such a proposal would not, therefore, be *fundamentally* different from the proposals consulted upon and would not require a re-consultation (although that course is open to the Council if it chooses to re-consult).

15. For the law on this point, see *R (Smith) v East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin) at [45], and *R (Elphinstone) v Westminster City Council* [2008] EWCA Civ 1069 at [62]-[63]: there is no duty to consult further on an amended proposal emerging in the consultation process itself unless there is a “*fundamental difference between the proposals consulted on and those which the consulting party subsequently wishes to adopt*”. Moreover, where the difference is not fundamental in nature, it is wholly lawful to revert only to certain parties (such as Willingham Parish Council and Over Parish Council), rather than carry out a full public reconsultation: see *R (Milton Keynes Council) v Secretary of State for Communities and Local Government* [2011] EWCA Civ 1575.
16. We therefore hope that in the next report to Committee, the officer will explain that the Committee is not constrained to recommend only the options consulted upon or no change at all; it is open to them to recommend an alternative boundary to full Council, including one which takes into account the views of both Parish Councils. (To be clear, the ultimate agreement of those parish councils is not in fact required for such an alternative proposal to be recommended, but the Committee may feel that it is desirable to explore whether such agreement can be reached.) For the avoidance of doubt, Mr Papworth would be wholly content with a new boundary which omits unoccupied farm land and has previously stated that the First Proposed New Boundary (illustrated with a green line in Appendix D of the report presented to Civic Affairs Committee) represents the most equitable way forward, particularly as the occupants of those properties that are currently located in the parish of Over, are in support of the First Proposed New Boundary.
17. Mr Papworth is however content to consider alternative boundaries that Willingham or Over Parish Councils may have in mind. To this end we note that Willingham Parish Council has written to Over Parish Council inviting them to meet and further discuss the matter before any referral back to Civic Affairs Committee.

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B. The Committee's statutory duties and terms of reference

(i) The identity and interests of the community

18. Under section 93(4)(a) of the Act, in conducting a CGR the Council is required to have regard to the need to secure that community governance in the area under review reflects the identities and interests of the community in that area. In reaching its recommendation, the Civic Affairs Committee failed to pay sufficient regard to either the identities or the interests of the residents of the affected area. The only references to these factors in the draft minutes of the Civic Affairs Committee's meeting are extremely brief, and they are not mentioned at all in support of the Committee's final decision.

19. Both the identity and interests of those living in the Highgate area plainly militate in favour of altering the boundary. The Secretary of State's guidance on CGRs, to which the Council must have regard under section 100(4) of the Act, states (at §58; underling added):¹

"It is clear that how people perceive where they live - their neighbourhoods - is significant in considering the identities and interests of local communities, and depends on a range of circumstances, often best defined by local residents. Some of the factors which help define neighbourhoods are: the geography of an area, the make-up of the local community, sense of identity and whether people live in a rural, suburban or urban area."

20. Application of this guidance to the present case makes it clear that the identity of the Highgate area is best served by being included within the parish of Willingham. Recent development in Willingham means that the village now stretches over the boundary with Over parish. By contrast, there is open countryside between the edge of development and Over village. The current 400-year old boundary therefore no longer accurately reflects the geography of the two parishes. Development has eroded the 'no-man's land' which previously existed on the

¹ Department for Communities and Local Government, and the Local Government Boundary Commission for England, *Guidance on Community Governance Reviews* (2010) ("the Guidance").

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current boundary line. The Guidance expressly envisages that such development may require the re-drawing of a boundary (at §15).

21. In these circumstances, those who work and live in the Highgate area plainly perceive themselves to be Willingham residents. As expressly noted by the Guidance, they are best placed to make this assessment. Willingham is their first port of call for goods and services, including for shopping, community activities and leisure pursuits (all key indicators that they belong to the Willingham community, see the Guidance at §51). As is natural, they feel that they belong in Willingham. This feeling is mutual, and Willingham Parish Council strongly supports the boundary move. Many Willingham residents considering the Highgate Business Park and surrounding area to be part of their village. The strength of this sense of identity amongst the local community is reflected in the large number of signatories to the CGR petition, and the majority response to the consultation in favour of changing the boundary.
22. The Guidance expressly recognises that development within and across parishes may render existing boundaries anomalous (at §84). For the reasons set out above, the current boundary between Over and Willingham is just such an anomaly. It plainly no longer reflects the identity or interests of those living and working in the Highgate area. The Civic Affairs Committee's previous failure to pay any or any adequate regard to these statutory factors means that its recommendation was made in breach of statutory duty. The forthcoming reconsideration will allow an opportunity to correct this.

(ii) *The effectiveness and convenience of community governance*

23. Under section 93(4)(b) of the Act, in conducting a CGR the Council is required to have regard to the need to secure that community governance in the area under review is effective and convenient. Once again, it appears from the draft minutes of the Civic Affairs Committee's meeting that, in reaching its recommendation, the Committee paid little or no attention to this statutory requirement. Had it done so, it would have been immediately apparent that the proposed boundary changes result in community governance arrangements that are significantly more effective and convenient than those that presently exist.

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24. The Guidance provides that (at §62):

“The Government believes that the effectiveness and convenience of local government is best understood in the context of a local authority’s ability to deliver quality services economically and efficiently, and give users of services a democratic voice in the decisions that affect them.”

25. The current governance arrangements for the Highgate area plainly do not result in the economic and efficient delivery of services. The reality is that businesses operating from the Highgate Business Park report regular difficulties in obtaining basic services such as internet and telephone connections. For example, Willingham Country Butchers, which occupies Unit 1 of the business park, was required to wait four months for a telephone line to be installed, at the cost of a considerable amount of trade and profit. The source of the problem appears to be that whilst the Business Park is currently located in Over parish, the phone lines are connected to the Willingham exchange. A number of businesses have also reported that deliveries and customers are regularly misdirected by satellite navigation systems, which give directions towards the parish of Over.
26. As noted in our letter dated 27 September 2017 (at §8-10), it does not appear as though the full extent of these concerns was adequately drawn to the attention of the Civic Affairs Committee. Alteration of the boundary would result in material practical improvements for those trying to operate their business from the business park. This would have evident positive consequences for the residents of Highgate and Willingham, both in terms of jobs and the range of shops and services which can be viably provided in the area.
27. Nor does the current boundary give those living and working in the Highgate area a democratic voice in the decisions that affect them. For the reasons set out above (at §21), the Highgate area effectively serves, and is served by, Willingham parish. However, residents and businesses within that area have no representation on Willingham Parish Council, and therefore no say in decisions which directly affect them. This is directly contrary to the Guidance set out above. It is also contrary to the stated importance of boundaries which give local people a say in the way their neighbourhoods are managed, and the opportunity to influence decisions affecting their lives (Guidance, at §47 and §73). Equally, it is in the interests of current Willingham residents to have a say in decisions relating to the Highgate area and business park. In practice, such decisions will affect the residents of Willingham parish significantly more than they will the residents of Over parish.

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28. At its last meeting, the Civic Affairs Committee failed to have any or any adequate regard to the fact that the proposed boundary offers significantly more effective and convenient community governance than the current boundary. Again, this is now capable of correction, if the Committee properly directs its mind to its statutory duties.

(iii) *Representations received in connection with the CGR*

29. Under section 93(6) of the Act, in conducting a CGR the Council is required to take into account any representations received in connection with the review (see also the Guidance, at §96). It appears from the report made to the Civic Affairs Committee on 28 September 2017 that the consultation responses were drawn to the Committee's attention. However, the Committee plainly failed adequately to take those responses into account when deciding on its recommendation. Had it done so, it would have come to the inescapable conclusion that the majority of representations received in relation to the review militated strongly in favour of adjusting the boundary.

30. 244 members of the public responded to the CGR consultation. As the numbers of respondents from each parish were broadly equal – 48% were residents of Over, and 51% were residents of Willingham – there can be no suggestion that the views of Over residents were underrepresented in the consultation data. Of the Over residents who responded, 58% supported moving the parish boundary. 91% of Willingham respondents supported moving the boundary, as did 78% of those from the Highgate area. There was therefore support for boundary alteration across all segments of the affected community. This is reflected in the fact that, overall, 67% of respondents supported moving the parish boundary to one of the two locations proposed by our client.

31. The minutes of the Civic Affairs Committee's meeting reveal that consideration of the consultation responses centred on the number, rather than the nature, of responses received. This is directly reflected in one of the two minuted reasons given in support of the Committee's decision to recommend that the boundary should not be changed: *"the consultation response of only 244 residents from both villages provided insufficient evidence for the change."* Yet the statutory scheme set out in the Act specifies no minimum threshold of responses below which a CGR would not be permissible. Indeed, it appears that in the same meeting, the Committee recommended an alteration to the boundaries of Caxton, Elsworth and Cambourne parishes on the basis of just 12 consultation responses. By contrast, the Committee plainly failed to

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take account of the fact that the consultation responses constituted strong evidence in favour of the Willingham-Over boundary alteration. The fact that there was not a larger response simply reflects how minor the proposed changes were, and that the proposed changes had little or no impact upon the wider area. That is no basis upon which the Committee could rationally conclude that there was “*insufficient evidence for change*”.

(iv) *The review terms of reference*

32. The CGR’s own terms of reference provided that:

- a. The Council would take into account community cohesion when conducting the review (§4.1 TOR);
- b. The “*feeling of local community and the wishes of local inhabitants*” would be “*primary considerations*” in the review (§4.2 TOR, reflecting the Guidance at §59);
- c. The Council would take into consideration changes that have happened over time, “*for example though population shifts or additional development, and that have led to a different community identity...*” (§4.3 TOR);
- d. Parish boundaries would normally reflect the ‘no-man’s land’ between communities, represented by areas of low population or pronounced physical barriers which “*oblige the residents of an affected area to have little in common with the remainder of the parish to which they may have been allotted*” (§4.4 TOR, reflecting the Guidance at §83).

33. However, as set out above, these matters were then neglected in the Committee’s decision.

C. Procedural irregularity

34. We appreciate that you will be fully aware that section 31(4) of the Localism Act 2011 prohibits members from participating or voting in any Council meeting if they have a disclosable pecuniary interest in any matter to be considered at that meeting. We apprehend that this was one of the reasons that the Monitoring Officer decided to refer the matter back to Committee. We will not labour the point, therefore, but for the avoidance of any doubt make clear that the Committee’s decision of 28 September was reached in breach of this requirement, given that:

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- a. Councillor Brian Burling was permitted to contribute to the debate on, but not vote on, the boundary recommendation.
- b. Councillor Burling is a landowner of agricultural fields within the area which would be affected by the boundary change. This is a disclosable pecuniary interest within s31(4) of the Localism Act 2011. As such, Councillor Burling was prima facie not entitled to either debate or vote on the boundary recommendation.
- c. Although section 33(1) of the Localism Act 2011 permits the Council to grant a dispensation to a member who has a disclosable pecuniary interest, paragraph 3 of the Council's own dispensations policy requires that a request for any such dispensation be made 15 days in advance of the relevant meeting. Councillor Burling failed to comply with that requirement, as his request for dispensation was not made until the day of the meeting.
- d. The Council's dispensations policy further provides that where a Councillor has not observed the 15-day deadline, a dispensation may be granted if that Councillor was only made aware of the existence of an interest once the Committee's agenda was published. However, the proposed boundary alteration was raised at a previous Civic Affairs Committee meeting which took place on 22 June 2017. At this meeting, it was decided that consideration of the Committee's CGR recommendation should be deferred until 28 September 2017. Although Councillor Burling did not attend this meeting, the report to Committee on the CGR was publicly available and will have been distributed to all Councillors. Further, we understand that Councillor Ray Manning was advised by the Monitoring Officer that it would not be appropriate for him to participate in the Civic Affairs Committee's meeting. Councillor Manning has an interest in land affected by the proposed boundary change which is similar to that of Councillor Burling. There does not appear to have been any reason why Councillor Manning should have been so advised whilst Councillor Burling was not. Finally, Councillor Burling is a councillor of long standing and is unlikely, as he stated in the meeting on 28 September 2017, to have been unfamiliar with the operation of the dispensation policy.
- e. In any event, none of the grounds on which a dispensation may be granted, as set out in s33(2) of the Localism Act 2011, apply in this case. This was not a case in

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which Councillor Burling's input was in the interests of persons living in the affected area (section 33(2)(b)); those interests were adequately and more accurately reflected in the consultation responses. Nor was it a case in which it was otherwise appropriate to grant Councillor Burling a dispensation (section 33(2)(e)). We understand that Councillor Burling's vocal opposition to the proposed boundary change has been well known for some time. Indeed, it appears from the draft minutes that Councillor Burling commanded a large portion of the debate on 28 September 2017. This cannot but have impacted on the Committee's final recommendation. The fact that the only other member of the Committee with a pecuniary interest in the affected land, Councillor Manning, had already excluded himself on the advice of the Monitoring Officer made it doubly inappropriate for Councillor Burling to be allowed to participate.

35. The appropriate course of action would have been for the Committee to require Councillor Burling to exclude himself from their deliberations on the boundary change, not just the vote. The Committee's failure to do so rendered its recommendation procedurally unfair and therefore unlawful. We anticipate that this error will not be repeated on the Committee's forthcoming reconsideration of the CGR.

Conclusion

36. We would be grateful for your confirmation that the matters set out above will be drawn to the attention of those preparing the new report for Committee and subsequently to Council. It is essential that the Committee's reconsideration of this issue proceeds on a lawful basis, that the members of the Committee fully understand the matters which they have a statutory duty to consider, and that they are aware that it is open to them to adopt a lesser boundary change than was originally proposed (if they see fit to do so). Any repetition of the substantive and procedural flaws in the Committee's decision would leave the Council exposed to an application for judicial review, which our client is anxious to avoid unless it is demonstrated to be necessary.
37. In due course please confirm the date of the Civic Affairs Committee meeting that the matter will be considered at and any deadline for written representations to be submitted.

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Yours faithfully



cc South Cambridgeshire District Council - Patrick Adams
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South Cambridgeshire District Council, Kirstin Donaldson, Development Officer
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