

BRECKLAND COUNCIL
REPORT OF THE DEPUTY CHIEF EXECUTIVE to the
COUNCIL - 9th JULY 2009

**FURTHER BUDGETARY PROVISION FOR
LOCAL GOVERNMENT REVIEW IN NORFOLK**

The purpose of this report

The purpose of this report is to obtain Council's approval of a further budget of £100,000 to fund a second judicial review of the Boundary Committee's and Secretary of State's review of local government in Norfolk and to advance the case for retaining a county and district councils system.

Recommendation

It is recommended that Council approves a further budget of £100,000 to fund a judicial review of the Boundary Committee and the Secretary of State's review of local government in Norfolk and to advance the case for retaining a county and district councils system.

Introduction

1. On 7th August 2008 Full Council approved the allocation of £100,000 to advance objections to the Boundary committee's draft proposal for unitary local government in Norfolk. Since then this authority has led a successful judicial review of the local government review process, which has been greatly assisted by the input of a range of other advice, notably from Messrs Freshwater, who have helped to shape and coordinate the campaign to Keep Norfolk Local, and SOLACE Enterprises, who have been commissioned to critique the financial case for LGR and compile a comprehensive objection to the Committee's draft proposals.
2. The effect of the judicial review has been to extend the local government review process by at least 12 months: the existing 2 tier system of local government in Norfolk was due to be abolished in April 2010, whereas the Boundary Committee and Secretary of State now recognise unitary local government cannot be introduced into the

County until April 2011 at the earliest. The judicial review did not obliterate the current process because the Court of Appeal concluded that whilst the Boundary Committee's methodology was flawed it could not be concluded the process was broken beyond repair. Instead, in allowing the local authorities' appeals, the Court clarified the way in which the relevant provisions of the legislation governing the review ought to be interpreted and applied. If the Committee had followed this advice and taken heed of concerns expressed by Norfolk, Suffolk and Devon local authorities it is possible the review might have been immune from further challenge. Regrettably, however, the Committee has misinterpreted and failed to apply the law correctly and ignored the representations of local authorities. Consequently, there is a strong case to be argued that the Committee's approach to the review is unlawful on the grounds that:-

- a) The Committee cannot demonstrate the proposals satisfy the Secretary of State's criteria on affordability and value for money because its work on affordability has been treated as a theoretical exercise that uses old (2007-2008) data and ignores the need to examine the actual costs of reorganisation in a very different financial landscape, characterised by rising costs and reduced income to local authorities;
 - b) The Committee have failed to consult adequately because they had and have sought no information on the affordability of draft concepts submitted to them early on in the process. Furthermore, the Committee's own consultants conclude the lack of a sponsor for the proposed Rural Norfolk Unitary Authority (which would be established if the Doughnut Model were implemented) sheds doubt on the reliability of the costs and savings that could be achieved by that authority.
 - c) The Committee have misdirected themselves as to the relevance of the status quo;
 - d) The Committee's process is flawed and amounts to an improper use of their statutory powers because they have agreed to follow a process which they know has been compromised by a lack of time and which has been driven by a desire to enable new authorities (or the subordinate legislation that will create them) to be introduced during the lifetime of the current Parliament.
3. In the circumstances, and subject to Leading Counsel continuing to advise there are reasonable prospects of success, it is anticipated the Council may wish to launch a further judicial review of the LGR process when the Committee submits its advice to the secretary of State on 15th July 2009. If a further claim is successful the probable outcome is that the review process will be quashed in its entirety and the Secretary of State left with the option of abandoning the process or starting it afresh.

Members may conclude that so far as the present government is concerned there would be little appetite for continuing to pursue this matter so close to an election.

The requirement for a further budgetary allocation

4. The total cost of judicial review proceedings was £150,750. The Court of Appeal ordered the Boundary Committee to pay one third of the local authorities' costs in the High Court and Court of Appeal. The Borough Council of King's Lynn & West Norfolk and South Norfolk District Council have agreed to contribute one third of the total cost of litigation. The Committee's contribution remains to be agreed between the parties or assessed by a court, but it can be seen that to date the total cost of litigation to this authority is likely to be in the order of £35,000 - £40,000.
5. Work carried out by Freshwater and SOLACE will be paid for by the three authorities mentioned in the previous paragraph and by North Norfolk and Broadland District Councils who will contribute towards the total cost in equal shares. To date the Council has been invoiced for work undertaken by Freshwater in the sum of £21,300, and approximately £10,000 of other work has been completed but not yet billed. Work carried out by SOLACE is likely to cost the Council about £5000. Thus the total cost of LGR to this authority to date has been in the order of £71,000 to £76,000. Allowing for the cost of a formal "assessment" of local authorities' costs in judicial review proceedings most of the budget that was allocated in August 2008 ought to be regarded as having been consumed.
6. It is probable that a further judicial review will be supported by at least 3 other Norfolk authorities, and provided the litigation is at least as successful as, and does not exceed the length of, the previous claim the cost to Breckland ought not to exceed about £40,000 to £50,000.
7. Parallel to, and in support of, a further judicial review it is also proposed to consult the public on the preferred structure of local government in Norfolk through an opinion poll conducted by MORI (members will recall that the Boundary Committee has refused to carry out any kind of referendum or survey of the public's views on its proposals for LGR). This will cost Breckland in the order of £10,000. The continued use of Freshwater to coordinate the campaign to Keep Norfolk Local and undertake specific pieces of research and other consultancy services is likely to cost around £30,000.
8. After allowing for a contingency of £10,000 the overall cost of local government review over the next 12 months is likely to be about £100,000. Unless further funding is made available it will not be possible for this Council to continue to resist the abolition of two tier local government in Norfolk. Members are therefore recommended to

allocate a further sum of £100,000 to enable officers to continue to pursue the Council's policy of maintaining the status quo.
