

Appendices: 2



NORTHAMPTON
BOROUGH COUNCIL

COUNCIL

14th December 2015

Agenda Status: Public

Directorate: Chief Executive

Report Title	PARISH COUNCIL ELECTIONS – DUSTON PARISH COUNCIL AND UPTON PARISH COUNCIL
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1. Purpose

1.1 To request the Council to call new elections for the Parishes of Duston and Upton due to administrative errors in the elections held on 7th May 2015

2. Recommendations

2.1 That Council direct the holding of new elections for the Parishes of Duston and Upton for all wards in each parish and fixes the date of such elections as 11th February 2016.

2.2 That the Returning Officer be requested to make arrangements for these elections to be called and carried out in accordance with relevant statute and regulations.

2.3 That the Chief Executive be authorised to complete and seal the formal Orders directing the elections in Duston and Upton parishes.

3. Issues and Choices

3.1 Report Background

3.1.1 In 2012/13 the Local Government Boundary Commission for England undertook a review of the Electoral Arrangements for Northamptonshire County Council.

3.1.2 Contemporaneously the Borough Council carried out a Community Governance Review (CGR) looking at the arrangements for Parish Councils in Northampton.

- 3.1.3 The Borough Council CGR concluded that there should be no changes to the electoral arrangements for Duston Parish Council, nor for Upton Parish Council. A small addition was made to the geographic area that is covered by Upton Parish to include the area known as Upton Grange within the Parish. These decisions were encompassed in the Northampton Borough Council (Reorganisation of Community Governance) Order 2013 made on the 13th February 2013.
- 3.1.4 The Boundary Commission review determined the number and then boundaries of County Council Divisions in Northamptonshire and within that, Northampton. This included the creation of a Division of Duston West and St. Crispins which includes parts of both Upton Parish and Duston Parish.
- 3.1.5 As part of their review the Commission had due regard to statutory criteria set out in Schedule 2 to the Local Democracy, Economic Development and Construction Act 2009. The Schedule provides that if a Parish is to be divided between different Divisions or Wards it must also be divided into Parish Wards, so that each Parish Ward lies wholly within a single Division or Ward.
- 3.1.6 As a consequence the Northamptonshire (Electoral Changes) Order 2013, made on the 16th January 2013, contains provision that :
- The existing wards of the parish of Duston are abolished
 - The parish of Duston is divided into three wards, named respectively:
 - New Duston East, with two councillors
 - New Duston West, with four councillors
 - Old Duston, with six councillors
 - The parish of Upton is divided into two wards named respectively:
 - Upton North, with eight councillors
 - Upton South, with three councillors
- 3.1.7 The attached map (Appendix 1) shows the various boundaries involved. The amendments to the County Council Divisions were properly implemented by the Borough Council and applied in the 2013 County Council elections. However the changes to Parish Council arrangements contained in the Northamptonshire (Electoral Changes) Order 2013 were not implemented.
- 3.1.8 The matter is being investigated and can only be explained as an oversight. It would appear that, with the CGR having included no changes to electoral arrangements in Duston and Upton, it was not realised that changes had in fact taken place through the Boundary Commission Review.
- 3.1.9 The Parish Council elections held on the 7th May 2015 were therefore held under pre-existing electoral arrangements. In Duston the elections were on the basis of the two previously existing Parish Wards. In Upton the elections were

for the whole Parish area (including the Upton Grange area added to the Parish in consequence of the CGR) and not warded.

3.1.10 The Borough Council has consulted with the Electoral Commission who have advised as follows:

It is the Commission's opinion that lawful parish council elections were not held in either the Duston or Upton parishes in May 2015 as legislation requires there to be a separate election for each ward (section 16(5) of the Local Government Act 1972).

We have reached this decision because the elections to both parishes in May 2015 should have been held using the new electoral arrangements as set out in the Northamptonshire (Electoral Changes) Order 2013). Therefore, for the purposes of the elections in May 2015, Duston Parish Council was divided into three new wards. A lawful election was not held for any of these three wards. Upton Parish Council was divided into two wards. A lawful election was not held for either ward.

Under section 39(4) of the Representation of the People Act 1983 where an election was either not held or where it was defective (and therefore the parish council is not properly constituted) the High Court or the district council is able to order a new election and fix the date for it. In addition, sections 39(4), (5) and (6) contain further provisions about how the subsequent election should be run. For example, the district council may by order make any appointment or do anything which appears to them necessary or expedient for the proper holding of such an election and properly constituting the parish council. It also confirms that the parish election rules will apply to the new election. Our view is that the District Council should now make an order for the elections in these two parishes to be re-run so that the correct warding arrangements can be given effect.

3.1.11 In light of this advice, which was received on the 25th November 2015, it is recommended that the Borough Council should call new elections under the correct electoral arrangements for the Parishes of Upton and Duston in all wards within the Parishes. (Draft Orders directing these elections be held are at Appendix 2).

3.1.12 It is further recommended that the date on which these elections are held is 11th February 2016.

3.1.13 The additional area of Upton Grange, which was unparished prior to the Borough Council's CGR, is not designated to either Upton North or Upton South by the Northamptonshire (Electoral Changes) Order 2013 due to the timing of the conclusion of the CGR process in relation to the timing of the conclusion of the Local Government Boundary Commission for England review. It is proposed that electors in Upton Grange would be included within the Upton South Ward. Advice of the Electoral Commission has been taken on this point.

4. Implications (including financial implications)

4.1 Policy

4.1.1 The report has no new policy implications.

4.2 Resources and Risk

4.2.1 At the May 2015 elections the two wards in Duston Parish were uncontested. Upton Parish was contested.

4.2.2 Any uncontested election has minimal costs which will be absorbed in normal budgets.

4.2.3 It is estimated that if elections are held in each ward of Duston Parish, the costs will be approximately £32,000. It is estimated that if elections are held in each ward of Upton Parish the costs will be approximately £10,000.

4.2.4 The costs will therefore vary according to the number of contested wards.

4.3 Legal

4.3.1 Section 16(5) of the Local Government Act 1972 states –

“Where a parish is divided into parish wards there shall be a separate election of parish councillors for each ward”.

Therefore, a separate election of parish councillors must be held for each ward in Upton parish and each ward in Duston parish in accordance with the current parish ward boundaries.

4.3.2 The Borough Council has a power under section 39(4) of the Representation of the People Act 1983 (the ‘RPA 1983’) to direct the holding of an election and fix the date for that election, in the following circumstances:

“(a) if any difficulty arises with respect of an election of parish ... councillors, or an individual parish ... councillor, or to the first meeting of a parish ... council after an ordinary election of parish ... councillors, or

(b) if a parish ... council is not properly constituted because an election is not held or is defective or for any other reason”

4.3.3 It is considered that the Parish Councils of Duston and Upton are not properly constituted because the election to each body in the circumstances was defective, (as separate elections were not held in May 2015 for each of the current parish wards in Duston and Upton parishes). Therefore, the Borough

Council can exercise its power under section 39 of the RPA 1983 to direct that new elections be held in each of the Parish wards.

4.3.4 This is a highly complex area of law and specialist advice has been sought. Although section 39(4) of the RPA 1983 does not specify how soon the new elections should take place, the elections should take place as soon as practicable to ensure that the position is regularised without undue delay, as this is in the public interest. It is advisable for the elections to take place within 35 days of the date of the Orders made by the Council directing that the elections be held. Therefore it is recommended that the Orders be made shortly after this Full Council meeting and the elections be held on 11th February 2016.

4.3.5 It is a general principle of the law that administrative acts are taken as valid unless and until they are set aside by a court of competent jurisdiction. Further the Local Government Act 1972 provides that acts and proceedings of a local authority shall not be invalidated by any vacancy among their number or by any defect in the election or qualifications of any member thereof. It can be asserted that these principles apply to the decisions taken by the Parish Councils of Upton and Duston since the May 2015 elections.

4.4 Equality

There are no new equality issues as a result of this report

5. Background Papers

5.1 Background File held by Chief Executive

David Kennedy, Chief Executive, 01604 837726 (or extension 7726)