

Community Governance

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Fiona Scolding QC

Introduction

- This talk:
 - What is community governance?
 - Community governance reviews
 - Citizens' assemblies
 - Lessons for decision-makers



What is community governance?

- “[Community governance may be defined as] community level management and decision-making that is undertaken by, with, or on behalf of a community, by a group of community stakeholders. The focus on ‘community’ rather than on a corporation, organisation, local government or the public sector is the distinguishing feature of community governance vis a vis these other forms of governance” (Totikidis, Armstrong & Francis, 2005).
- In essence, community governance is about community involvement in all aspects of public sector decision-making.
- Far from being merely a political concept, aspects of community governance have been emphasised by successive governments in both policy and law.
- This has implications for the lawfulness of consultation exercises and decision making

Community Governance Reviews

- Local Government and Public Involvement in Health Act 2007, s.79:

Community governance reviews

(1) A community governance review is a review of the whole or part of the principal council's area, for the purpose of making recommendations of the kinds set out in sections 87 to 92 [regarding the creation of new parish or local councils]

(2) In undertaking a community governance review the principal council must comply with—

(a) this Chapter, and

(b) the terms of reference of the review.

Community Governance Reviews

- The London Government Act 1963 abolished parishes existing at the time within London. When the boundaries for Greater London were established, they were adjusted to allow the surrounding shire counties to keep parishes that were in the fringe areas. Between 1963 and 2008 London was the only part of England not to have parishes or parish councils.
- The 2007 Act allowed London boroughs the possibility to exercise the same community governance powers as other principal councils, including being able to set up parishes and parish councils.
- Local electors in London boroughs are now able to petition for a community governance review, as elsewhere in England. See e.g. the Spitalfields petition

Community Governance Reviews: guidance

- Since 13 February 2008, district councils, unitary county councils and London borough councils have had responsibility for undertaking community governance reviews.
- They have been able to decide whether to give effect to recommendations made in those reviews.
- 2007, s.101 provides that the Secretary of State may issue guidance about undertaking community governance reviews.
- Guidance was produced in 2010: Councils are required, by section 100(4) of the 2007 Act, to have regard to this guidance.
- The Guidance states that a Review must take place within 12 months of a petition from local residents.

Community Governance Reviews in London



Queen's Park, Westminster

Community Governance Reviews in London

- London's first parish council was Queen's Park Community Council in Westminster, May 2014
- On receiving a petition in support of a community council in May 2011, Westminster Council instigated a 12-month Community Governance Review to look into options for local service provision across the borough.
- As part of Westminster's Community Governance Review, a referendum was held in Queen's Park ward to confirm that the community council was supported by residents.
- The referendum provided this confirmation, with 69% supporting the formation of the community council (turnout was 20%)
- A Westminster Council Reorganisation Order in October 2013 officially established the new parish and council.

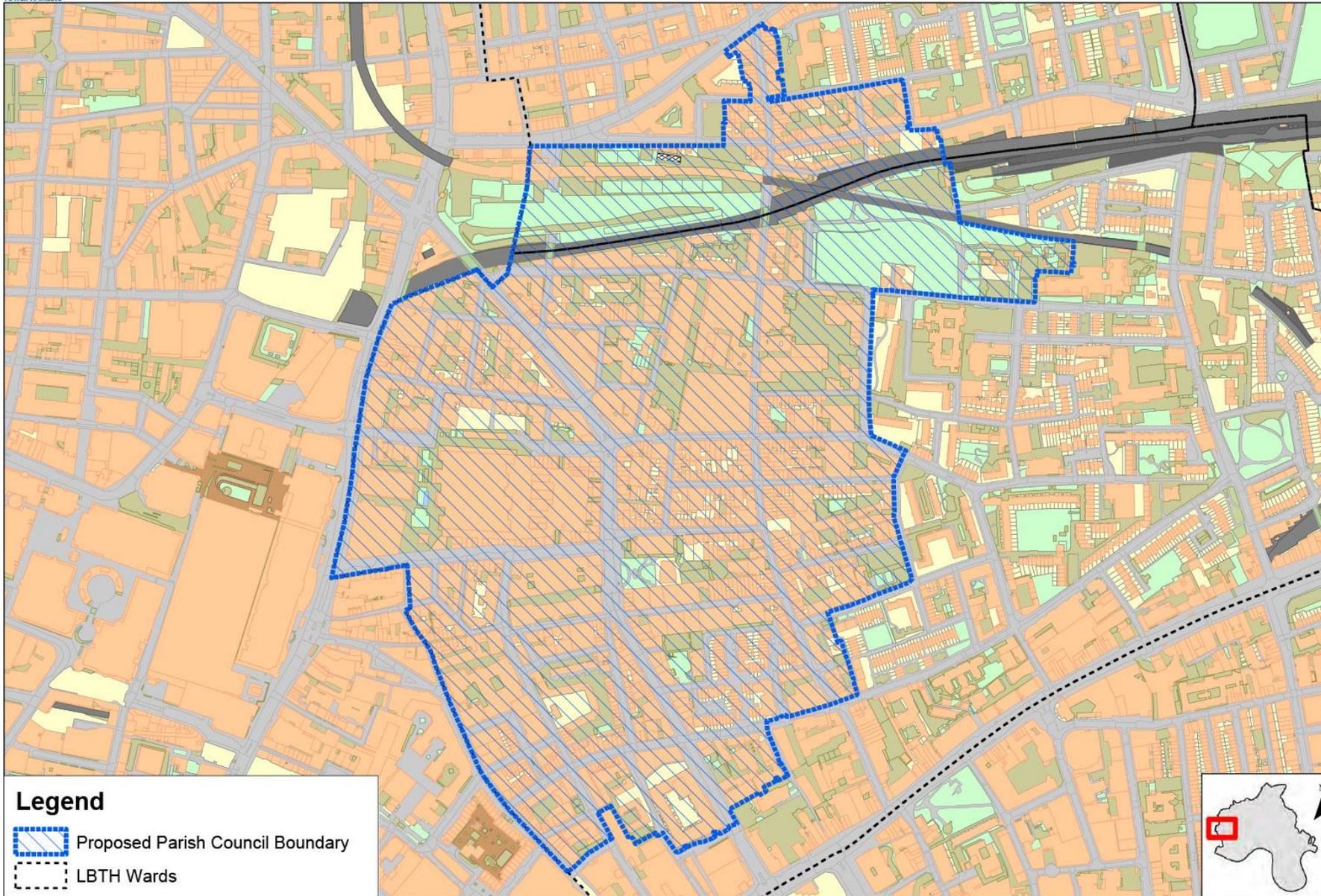
Community Governance Reviews in London



Spitalfields and Banglatown



Spitalfields



Legend

-  Proposed Parish Council Boundary
-  LBTH Wards

Community Governance Reviews in London

- Spitalfields in Tower Hamlets was abolished as a civil parish in 1921.
- On 23 July 2018 a petition was submitted to Tower Hamlets Council to create a new parish council, “Spitalfields and Banglatown”.
- Two consultation phases took place as part of the review. The first phase, on the proposals as set out in the petition, ran from 8 October 2018 and closed on 31 December 2018. The second phase, including the Council’s preferred recommendation to reject, ran from 6 March 2019 to 28 May 2019.

Community Governance Reviews in London

- At a Council meeting on 17 July 2019 councillors considered the final analysis and conclusions from the consultation phases, which found:
 - There is not significant support for the creation of a parish council, either within the area or within the broader community.
 - A parish would not be reflective of the identity and interests of the whole community.
 - The creation of a parish would be likely to damage community cohesion both within the area and between the area and other parts of the borough.
 - A parish council would not be an effective and convenient form of local governance and would not be best placed to deliver quality services efficiently and effectively.
 - There is the potential for a significant additional financial cost to local residents from the precept raised by a parish council with a particular concern that this could have a greater impact on people living on lower incomes.
- The Council decided to reject the petition.

Community Governance Reviews: possible legal challenges

- *R (on the application of Britwell Parish Council) v Slough Borough Council* [2019] EWHC 998 (Admin): Challenge to the abolition of a parish council.
- A public authority must act in accordance with guidance or, if not, give clear reasons for departing from it (*R (Khatun) v London Borough of Newham* [2004] EWCA Civ 55 at 47)
- 2010 Guidance: must be “clear and sustained local support” for abolition of parish councils [120]
- Polls suggested a significant proportion of the population supported abolition, but not a majority.
- The Court quashed the decision to abolish.

Community Governance Reviews: possible legal challenges

- Interestingly the fact that Slough attempted to justify its decision with reference to the 2010 Guidance did it more harm than simply departing from it.
- The judge said at [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.”

Community Governance Reviews: possible legal challenges

- There are also potential challenges to the creation of new parishes: for example, if there are issues electoral composition.
- 2010 Guidance: “*If a principal council decides that a parish should be warded, it should give consideration to the levels of representation between each ward.*” [165]
- There should not usually be a significant difference in levels of representation [166]
- Guidance: “*Where a community governance review recommends that two or more parishes should be grouped under a common parish council, then the principal council must take into account the same considerations when considering the number of councillors to be elected by each parish within the group.*” [168]

Citizens' Assemblies



Citizens' Assemblies

- Citizens' assemblies, in which key local issues are put in the hands of a group of citizens, are gaining traction as an idea.
- At least 11 councils have been organising assemblies around climate change e.g. Camden LBC.
- Bristol City Council will introduce two citizens' assemblies pilot schemes this year to increase the involvement of citizens in the council's decision-making process.
- Bristol Council noted that the new processes would not be used for everyday decision making, but for complex and divisive issues or where there might be political gridlock.



Citizens' Assemblies: legal issues

- The increasing importance of citizens' assemblies will likely lead to novel legal challenges.
- For example, to what extent are public sector consultation requirements affected by the involvement of a citizens' assembly?
- Can citizens' assemblies be used as a form of delegated decision making under e.g Local Government Act 1972 s.101?
- Does a promise to utilise a citizens' assembly as part of a decision-making process, as in Bristol, give rise to legitimate expectations regarding how the assembly's recommendations are implemented?



Thank you for listening

fscolding@landmarkchambers.co.uk

slides by Alex Shattock

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

 clerks@landmarkchambers.co.uk

 www.landmarkchambers.co.uk

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