

**Detling Parish Council – Appointment of Councillors –  
Section 91(1) Order**

<b>Timetable</b>	
<b>Meeting</b>	<b>Date</b>
Council	19 July 2023

<b>Will this be a Key Decision?</b>	Not Applicable
<b>Urgency</b>	Not Applicable
<b>Final Decision-Maker</b>	Council
<b>Lead Head of Service</b>	Angela Woodhouse, Director of Strategy, Insight and Governance
<b>Lead Officer and Report Author</b>	Ryan O’Connell, Democratic and Electoral Services Manager
<b>Classification</b>	Public
<b>Wards affected</b>	Detling and Thurnham

**Executive Summary**

This report asks Council to approve an Order under Section 91(1) of the Local Government Act 1972 to make appointments to Detling Parish Council, in order to enable the parish council to achieve quorum and function.

**Purpose of Report**

Decision

**Recommendation to Council:**

That Council delegates authority to the Monitoring Officer to make an Order under section 91(1) of the Local Government Act 1972 in respect of Detling Parish Council in the form of the Order at Appendix 1

# Detling Parish Council – Appointment of Councillors – Section 91(1) Order

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	Not applicable	Democratic and Electoral Services Manager
<b>Cross Cutting Objectives</b>	Not applicable	Democratic and Electoral Services Manager
<b>Risk Management</b>	By agreeing the order the Council will be taking action to manage risks arising from Detling Parish Council not being able to function.	Democratic and Electoral Services Manager
<b>Financial</b>	None	Democratic and Electoral Services Manager
<b>Staffing</b>	Three Councillors have been recommended to be appointed to Detling Parish Council.	Democratic and Electoral Services Manager
<b>Legal</b>	<p>Schedule 12, Part II, Para. 12 of the Local Government Act 1972 (the "1972 Act") states that <i>"... no business shall be transacted at a meeting of a parish council unless at least one third of the whole number of members of the council are present at the meeting; but, notwithstanding anything in that paragraph, <u>in no case shall the quorum be less than three</u>".</i></p> <p>Detling Parish Council is unable to transact business at the current time.</p> <p>Section 39(4)(b) of the Representation of the People Act 1983 states that <i>"...if a parish ... council is not properly constituted because an election is not held or is defective <u>or for any other reason</u>, the district council (i) may by order make any appointment or do anything which appears to them necessary or expedient for the proper holding of such an election or</i></p>	Russell Fitzpatrick (MKLS)

	<p><i>meeting and properly constituting the council, and (ii) may, if it appears to them necessary, direct the holding of an election or meeting and fix the date for it.</i></p> <p>Section 91(1) of the 1972 Act gives the Council a discretionary power: <i>“Where there are so many vacancies in the office of parish or community councillor that the parish or community council are unable to act, the district council may by order appoint persons to fill all or any of the vacancies until other councillors are elected and take up office.”</i></p> <p>This is a non-executive function that has not been delegated and as such it is for the Council to determine.</p>	
<b>Privacy and Data Protection</b>	None	Democratic and Electoral Services Manager
<b>Equalities</b>	There is no impact on Equalities as a result of the recommendations in this report. An EqIA would be carried out as part of a policy or service change should one be identified.	Equalities & Communities Officer
<b>Public Health</b>	None	Democratic and Electoral Services Manager
<b>Crime and Disorder</b>	None	Democratic and Electoral Services Manager
<b>Procurement</b>	None	Democratic and Electoral Services Manager
<b>Biodiversity and Climate Change</b>	None	Democratic and Electoral Services Manager

## 2. INTRODUCTION AND BACKGROUND

2.1 At the May 2023 Detling Parish election, Detling Parish Council had two Parish Councillors elected without contest out of seven available seats. Detling Parish Council has seven seats, and the quorum to hold a meeting of the Parish Council is three. Accordingly, at present, Detling Parish

Council cannot meet nor act. It is inquorate and in effect has been paralysed from conducting any Parish business since the elections. The remaining Councillors are unable to make any decisions and may not co-opt any Councillors, even on a temporary basis.

- 2.2 Section 91(1) of the Local Government Act 1972 (the 1972 Act) enables a district Council to make appointments (by order) to a parish council to enable it to function. The appointments are made either until the next election of the parish or until other Councillors are appointed, through co-option.
  - 2.3 Attached at Appendix 1 is the relevant order required to make such appointments to Detling Parish Council. The aim of the Order, and the chosen number of appointments is to minimise the number of interventions required with the parish council and enable it to co-opt other Councillors, or in the event that co-option cannot take place, to continue to function.
  - 2.4 The 1972 Act does not provide any guidance as to whom can be appointed to fill such vacancies. It is usual, however, to appoint relevant District Councillors, if they are willing to take on the role. Listed on the Order are three Maidstone Borough Councillors to be appointed. The appointments have been discussed and agreed with those Councillors. One of the Councillors is the Ward Member for Detling and Thurnham, who it was felt appropriate to approach in the first instance. Two further Councillors were approached due to their experience of working with Parish Councils and their positions on a nearby Parish (Bearsted Parish Council).
  - 2.5 It is recommended that three appointments be made to give Detling Parish Council a membership above the minimum quorum, and to provide the experience necessary to help the Parish to function.
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### **3. AVAILABLE OPTIONS**

- 3.1 Option 1 – Agree the delegation to the Monitoring Officer to make an Order of the form attached at Appendix 1 – this would enable Detling Parish Council to function and provide a Parish Council of five members which would provide the resilience and experience necessary for the Council to function.
- 3.2 Option 2 – Agree a delegation to the Monitoring Officer to make an amended Order with fewer appointments (one) which would enable the Council to achieve quorum but runs the risk that one Councillor not attending would render meetings inquorate, and would reduce the experience on the Parish Council.
- 3.3 Option 3 – Agree a delegation to the Monitoring Officer to make an amended Order with a greater number of appointments – this would achieve a functioning Parish Council, but would be the Council making more unelected appointments than it needs to in order for the Council to function.

- 3.4 Option 4 – the Council could decide not to make any appointments, but then the Parish Council would not be able to function and serve the community of Detling.
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#### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 Option 1 – agree the delegation to the Monitoring Officer to make an Order of the form attached at Appendix 1 – is the preferred option for the reasons set out.
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#### **5. RISK**

- 5.1 The specific risks of each option have been considered, and the final number of appointments (three) is recommended as the best way of managing those risks.
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#### **6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 6.1 The Councillors listed on the order and the clerk to the Parish Council have been consulted on the chosen approach.
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#### **7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 7.1 The Parish clerk will be informed of the appointees, and the Parish Council will hold its first meeting to appoint a Chairman and conduct its own business.
- 7.2 Two copies of the order will be sent to the Secretary of State as required by the section 91(3) of the 1972 Act.
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#### **8. REPORT APPENDICES**

- Appendix 1: Section 91(1) Order
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#### **9. BACKGROUND PAPERS**

None