

BABERGH DISTRICT COUNCIL

URGENT INSTRUCTIONS TO COUNSEL

DAVID FORSDICK QC

Counsel's urgent written advice is sought in relation to the decision-making powers of Babergh District Council (and Mid Suffolk District Council) to request the Secretary of State for Communities and Local Government to dissolve the existing councils and create a new, single, district council for the combined geographical area of Babergh district and Mid Suffolk district.

We understand that Counsel has previously advised a number of districts with regard to their legal powers to 'merge' to form new (larger) authorities made up of two or more existing district councils.

Most recently we understand Counsel has provided verbal advice to Waveney District Council and Suffolk Coastal District Council ('East Suffolk') regarding their Cabinet reports.

East Suffolk's Monitoring Officer has confirmed to us Counsel's verbal advice that the exercise of functions under s.15 of the Cities and Local Government Devolution Act 2016 are executive ones; and that therefore, they fall to be made by the Cabinet. [NB But that it is accepted that the Government has not made the necessary regulations to implement the true intention, which was, to make these Council functions; as structural change is usually a matter for the whole council.]

Counsel is asked to provide Babergh District Council with written opinion regarding this legal position and how it fits with Babergh District Council's [Constitution](#) (pages 33 to 40), which some Councillors are interpreting as requiring such decisions to be made by the whole council.

In particular Babergh District Council would like Counsel to advise on the appropriate decision-making body to request that the Secretary of State for Communities and Local Government dissolve the Council and create a new, single, district council for the area of Babergh district and Mid Suffolk district.

Background

Babergh District Council and Mid Suffolk District Council have been working together in partnership since 2011. At the request of the Leaders of both Councils the Chief Executive

has explored future options for this partnership working. A report containing these options was presented at a Simultaneous meeting of the two Cabinets on 13 October 2017.

13 October 2017 – Cabinet

On 13 October 2017 the Cabinet of Babergh District Council made the following decisions:

1. To provisionally endorse the approach of formally dissolving the two district Council's and creating a new larger District Council.
2. To utilise 'Transformation Funding' to jointly conduct stakeholder, public and staff engagement during Autumn 2017.
3. Subject to the outcome of the public engagement a draft (Department for Communities and Local Government compliant) business case for the dissolution of Babergh District Council and Mid Suffolk District Council, the creation of a new single district council for the area be considered by each Council.

The report can be viewed here:

<http://baberghmidsuffolk.moderngov.co.uk/ieListDocuments.aspx?CId=521&Mid=1017&Ver=4>

The minutes can be viewed here:

<http://baberghmidsuffolk.moderngov.co.uk/documents/s7884/Appendix%20A%20-%20Minutes%2013102017.pdf>

31 October 2017 – Overview and Scrutiny

Councillors at Babergh District Council subsequently 'called-in' the Cabinet's decision. On 31 October 2017 the Overview & Scrutiny Committee of Babergh District Council considered the reasons for 'call-in' and resolved that:

- (i) the principles of decision making were breached and that the decision be referred back to Cabinet for reconsideration with additional information. The following additional information should be considered by the Cabinet:
 - (a) The comments raised during the meeting of the Overview & Scrutiny Committee on 31 October 2017;
 - (b) A more detailed Financial Case; and
 - (c) Further information about the consultation activities, particularly the telephone poll.
- (ii) Cabinet be requested to refer these decisions to a meeting of the full Council for debate, before Cabinet makes its final determination.

The Overview and Scrutiny Committee report can be viewed here:

<http://baberghmidsuffolk.moderngov.co.uk/ieListDocuments.aspx?CId=184&Mid=1165&Ver=4>

The minutes can be viewed here:

<http://babberghmidsuffolk.moderngov.co.uk/documents/s7916/Appendix%20B%20-%20Minutes%2031102017.pdf>

7 November – Cabinet

On 7 November the Cabinet considered the matters referred by the Overview & Scrutiny Committee and agreed to refer the issue to a meeting of Full Council for debate (not decision) as resolved by Overview and Scrutiny Committee on 31 October.

21 November 2017 - Full Council

On 21 November Babergh District Council met to debate the matter in order to aid Cabinet in its reconsideration of the matter – which is due to take place on 7 December 2017. The report considered at Full Council included, as requested by the Overview & Scrutiny Committee, a more detailed financial case and further information about the planned engagement activities.

The Council discussion mainly focussed however on whether the nature of the final decision to submit a proposal to the Secretary of State (and any decisions made in preparation for that final decision) should legally be made by Council or Cabinet. Full Council therefore passed a motion to request Counsel's written advice before Cabinet meets again on 7 December 2017 and before any further work is carried out e.g. launching the public engagement.

The report can be viewed here:

<http://babberghmidsuffolk.moderngov.co.uk/ieListDocuments.aspx?CIId=153&MIId=1157&Ver=4>

EMILY YULE

Monitoring Officer

Babergh District Council