

DECLARATION OF VACANCY

Extraordinary Council	10 February 2022
Report Author	Estelle Culligan, Director Law and Democracy
Portfolio Holder	Leader of Council, Cllr Ash Ashbee
Status	For Decision
Classification:	Unrestricted
Ward:	Nethercourt Ward

Executive Summary:

A report to notify Council of a councillor ceasing to be a member of the Council by reason of failure to attend meetings during a six month period and to recommend that Council declares the vacancy.

Recommendation(s):

1 It is recommended to Council that:

- (a) It is noted that Cllr Liz Green ceases to be a member of the Council by virtue of her failure to attend meetings for a period of 6 months between 15 July 2021 and 15 January 2022;
- (b) A vacancy in the Nethercourt ward be declared.

Corporate Implications

Financial and Value for Money

There are no anticipated financial implications to this report, other than the usual costs of the by-election.

Legal

Under Section 85 of the local Government Act 1972 (the LGA), if a councillor fails throughout a period of six consecutive months from the date of his/her last attendance to attend any meeting of the authority, s/he shall, unless the failure was due to some reason approved by the Council before the expiry of that period, cease to be a member of the authority.

Section 86(1)(c) of the LGA states that where a councillor ceases to be a member of the authority by reason of failure to attend meetings of the authority, the authority shall, except in cases in which a declaration has been made by the High Court, forthwith declare the office to be vacant.

Section 87(1)(f) of the LGA states that the date of the vacancy in these circumstances is the date of declaration by the Council.

Corporate

The declaration of the vacancy will mean that there is a requirement for a by-election in the Nethercourt ward.

Equality Act 2010 & Public Sector Equality Duty

There are no equality implications

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- *Environment*
- *Communities*

1.0 Introduction and Background

- 1.1 Cllr Liz Green last attended a meeting of the Council on 15 July 2021 (Council). She therefore had until midnight on 15 January 2022 to attend a further meeting to avoid the effect of Section 85 of the LGA. For the purposes of satisfying Section 85 of the LGA, attendance at any meeting at which she is a member of the committee, sub-committee, advisory committee etc, is relevant. Cllr Green is a member of Council and Licensing Committee.
- 1.2 Officers have undertaken a thorough check of attendance records and minutes of all meetings held during those six months. There is no record of Cllr Green attending any meetings during the period 15 July 2021 to 15 January 2022. Within that period, Cllr Green did not apply to the Council to approve the reasons for her absence. Therefore the Council has not given its approval of the reasons for her failure to attend and as a result, Cllr Green ceases to be a councillor by virtue of Section 85 of the LGA.
- 1.3 Councillors should note that the calculation of the “consecutive months” under Section 85 of the LGA, is from the date of the last attendance (in this case 15 July 2021) until the corresponding day six months’ later (in this case 15 January 2022).

2.0 The Current Situation

- 2.1 Section 86(1)(c) of the LGA states that where a councillor ceases to be a member of the authority by reason of failure to attend meetings of the authority, the authority **shall**, except in cases in which a declaration has been made by the High Court, forthwith declare the office to be vacant. This is a statutory duty which imposes an obligation on the Council in the use of the word “shall” and it is therefore recommended that the Council declares the vacancy.
- 2.2 Under Section 87(1)(f) of the LGA, the vacancy is deemed to arise on the date on which the Council declares the vacancy - 10 February 2022. Public notice of the vacancy must be given immediately after the declaration.

3.0 Options

- 3.1 As stated in this report, Cllr Green ceases to be a member of the authority by reason of having failed to attend meetings during the 6 month period between 15 July 2021 and 15 January 2022. There is a statutory duty and obligation on the Council to declare the vacancy at this meeting, at which point the vacancy arises. The recommendations are set out in section 1 (a) and (b) in the Recommendations section above.
- 3.2 As members must vote to make this declaration, Council could vote not to declare the vacancy. However, this would mean that the by-election could not go ahead and the decision would be open to challenge by way of judicial review, on the basis that the Council had acted unlawfully by not complying with its statutory duty.

4.0 Next Steps

- 4.1 If the recommendations are accepted, the next step is that the Council will give public notice of the vacancy and will hold a by-election.

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Corporate Consultation

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