

HORMEAD PARISH COUNCIL

Minutes of the Extraordinary Parish Council Meeting held on Wednesday 10 October 2012 in the Meads Pavilion, 7.30pm

PRESENT: Cllr Robb Denham (RED), Chairman; Cllr David Ginn (DEG), Vice-Chairman; Cllr Dave Baseley (DB); Cllr Jayne Denham (JD); Cllr Elaine Harding (EH); Cllr John Kilby (JK); Cllr Hazel Morgan (HM)

Clerk: Colin Marks

10 members of the public.

ACTION

12.155 Apologies for absence

1. **Councillors:** None

2. **Other Councillor absences:** None

3. **Others:** District Councillor Rose Cheswright – Development Control Committee meeting

12.156 Declarations of Interest

Non-pecuniary interests were declared in respect of the Village Hall by Cllr Harding (living next door), Cllr Ginn (living in the vicinity), and Cllr Kilby (VHMC member); Cllr Denham declared a non-pecuniary interest in respect of the school (as a Governor).

12.157 To consider and agree new Standing Orders

The Chairman asked if, having considered the draft, councillors had any comments. Cllr Kilby asked if the Chairman could identify the amendments made to the NALC model, to which he replied they were mainly concerned with deleting references to the areas of discipline and the notification of complaints, now carried out by EHDC, as well as the Well-Being section not applicable to very small parishes. There were incorporated elements relating solely to HPC brought forward from the previous standing orders adopted by the Parish Council in 2007.

Following a seconded proposal and vote it was **RESOLVED (by 6:1, with 1 abstention) that the new Standing Orders, as drafted, be adopted forthwith by the Parish Council.**

12.158 Village Hall

1. The Clerk's report on the outcome of enquiries into the legal title of the Village Hall land was received (*copy appended*). The Chairman said that was the end of any further enquiries into land ownership and wished it to be minuted that the land title belongs to The Custodian Trustee for Charities.

2. The agenda item before the Council was to discuss the 'failure of VHMC to prove "all legalities have been followed" in respect of the proposed land sale, and consequently no meeting has been called for parishioners to vote on the issue as is their right.' The Chairman asked Cllr Kilby (as Chairman of the VHMC) if that was a true statement.

In response, Cllr Kilby handed round copies of a notice that he said was going into the Parish Newsletter and into the Hertfordshire Mercury giving 14 days notification of a vote at the VHMC AGM on 7 November for approval to sell the land to raise funds to enable the new Village Hall to be built.

The Chairman said he was pleased to have reached this point, which now addressed the matter, and questioned why there had been arguments about the legalities. Cllr Kilby asked for the Deeds to be returned to the VHMC, but did not respond to the question.

In answer to further questions, Cllr Kilby said there had never been a way of building a new hall without the sale of the land and rejected a suggestion that the VHMC had once had £100k in its account, saying that had never been the case. He also stated that fundraising was ongoing through Village Hall events, but not by other means.

3. Report on and discussion of VHMC letters regarding Parish Council representatives.

The Chairman said that following the VHMC's refusal since January to accept Cllr Ginn as the Parish Council's (PC) nominated representative, a letter from the Charity Commission (CC) in June advised that the VHMC could not block Cllr Ginn's appointment. The letter was copied to Mrs Marty Kilby as VHMC Secretary. Therefore Cllr Ginn should be accepted forthwith and given copies of all relevant documents and minutes of trustee meetings from which he had been excluded.

The Chairman further explained that the CC had made it clear that a nominated representative should represent only one outside body, therefore Mrs Collery's appointment as the PC representative in November could not stand because it was later discovered she had been representing Leapfrogs and Toddlers since she became a trustee in November 2011. That was the reason Cllr Ginn was subsequently appointed and that he remains, therefore, the PC's formally appointed representative trustee.

Cllr Kilby said Cllr Ginn's opposition to the Hall meant he could not act in the interests of the trustees, to which the Chairman replied that it was not in the interests of the Committee, but in the interests of the *Trust* that he should act and in that respect he was perfectly well qualified to represent the parishioners – the beneficiaries of the Trust.

Cllr Kilby continued to assert that Cllr Ginn had acted in every possible way against the interests of the Village Hall, for example he never gave support or attended functions, which point was refuted by the Chairman who said he had attended functions with Cllr Ginn. He added that Cllr Ginn is the PC's nominated trustee, an appointment that has been sanctioned by the Charity Commission, and he attested that Cllr Ginn had not acted against the Trust.

Mrs Kilby interrupted and attempted to explain that a nominated representative cannot be subsequently removed from the trustee board by the nominating body, but has to remain for the full term. Therefore, once nominated by it, the Parish Council could not then remove Elizabeth Collery. The Chairman refuted the argument by saying that Mrs Collery's position of already representing two other community groups disqualified her and invalidated her nomination. Therefore Cllr Ginn was eligible to be nominated.

It was then suggested that former Cllr Brian Stone was therefore still a trustee, but Mrs Kilby said he was not because there had been a VHMC AGM since his resignation. The Chairman pointed out that he would still be the Parish Council's trustee under the Trust rules and that no-one outside the trustees knew about the AGM anyway. She also insisted that the Parish Council does not necessarily have to appoint a member of the Council to represent it. However, the Chairman said that was irrelevant; the PC has nominated Cllr Ginn as its representative on the VHMC and the VHMC have refused to accept him, which they cannot do.

Mrs Kilby said there was a difference between a nominee and a representative, and that one is not necessarily the other, to which the Chairman asked if that was so, why Mrs Collery did not know it, and why it was not raised when she was nominated by the Council to be its representative.

The Chairman then said that, in light of Mrs Kilby's assertions, the Parish Council would have to consider taking action in order to fully understand the position on the basis that he believed the VHMC Secretary was incorrect, and that it would be necessary to include the Charity Commission in its research.

The Chairman then told Mrs Kilby that she, having been a trustee and secretary of the VHMC for many years, should have been aware of the Charity Commission's rules when the appointment of Cllr Ginn was made, but instead her initial reaction was a personal attack on

Cllr Ginn, for which he asked her to apologise, and for the fact that a confidential email between councillors had been obtained by her, extracts from which had been copied to trustees and others, resulting in Shane Collery at least having a copy.

Mrs Kilby asked the Chairman to state specifically what she should apologise for, and after some disagreement, she was handed a copy of the email in question sent to the Council by her in February. Upon inspection, Mrs Kilby said the text of the email was true and asked again for clarification of what she was supposed to apologise for.

Cllr Kilby then asked at what point the Parish Council and the VHMC could move forward together, and also wanted to know when the VHMC would get their deeds back. The Chairman replied that the deeds belong to the Parish Council and that the VHMC have copies. He also said he knew from correspondence that, despite assertions to the contrary, they had been in Mrs Kilby's possession since early 2008. Cllr Kilby again asked when the two parties could move forward. The Chairman responded that they could do so when the VHMC are transparent and make known the details of fund raising, pointing out there is still a large shortfall between the amount to be raised by the sale of the land and the cost of rebuilding.

Cllr Kilby explained that it was only now that the VHMC are getting a realistic idea of what the land will be sold for that they can begin to tailor their plans to fit the financial reality, but that the sale of land was always part of the equation. Cllr Ginn asked how much the rebuilding cost was reckoned to be, to which Cllr Kilby replied that £241k was a possible figure, plus building regs and other costs.

Following further comments, there being no further business, the meeting was closed at 8.22pm.

Signed **Dated**.....

Statement by the Clerk regarding the Minutes:

*Minutes of Parish Council meetings are not meant to be a word-for-word record of the evening's dialogue. Rather, they should simply record the general points of any discussion relevant to the Council's business, ie the making of its decisions. However, in the case of this Extraordinary Meeting, considerable more dialogue has been recorded than would normally be the case because of the strength of feeling on the subject of the Village Hall within the Parish and in an effort to reflect and record the arguments made at the meeting. There were persistent interruptions from the floor which the Chairman tried to curtail, but he allowed many comments to be made without the formality of continually seeking the agreement of councillors, so that expression and explanations could be given to fervently held views.
Colin Marks, Clerk to Hormead Parish Council*

Appendix to 12.158.1

Report on the enquiries into the legal title of Hormead Village Hall land.

Background

The Parish Council was prevented from registering the land with Land Registry in November 2011 when the VHMC asked the Charities Commission to vest itself as Custodian Trustee in place of Hormead Parish Council. In subsequent correspondence, Land Registry said it could not make a judgement regarding the ownership of the land and advised the Parish Council take independent legal advice.

In further correspondence, the Charity Commission admitted they were unable to say who owned the land, but said that if the Parish Council could provide evidence that it was the owner in its statutory capacity, they would reconsider their vesting order.

The Clerk was unable to secure any further advice or clarification, and at an Extraordinary Meeting on 10 August 2012, the Clerk was authorised by the Council to deal with a solicitor of his choice and, with a budget of £500, to resolve the question of ownership of the Village Hall land. HAPTC's independent opinion was that £500 was a modest sum to ascertain with certainty the legal ownership of a valuable Parish asset.

The solicitor

Hedleys Solicitors in Surrey were recommended by HAPTC as having successfully worked with Parish Councils in charity matters, and were engaged. They were provided with copies of the Deeds and Conveyances, and Land Registry and Charity Commission correspondence for background information.

The outcome

The 1962 Conveyance notes that the Parish Council paid £200 for the land, which it was to hold "in trust" for the inhabitants of the Parish, and it also details the establishment of the charity, whose managing trustees were to manage the Village Hall and its use for the beneficiaries of the charity. The later conveyances of 1963 and 1966 added land to the plot to create the present Village Hall site.

In paying £200 for the land, the Parish Council became the Custodian Trustee in that it held the freehold legal estate in land. It is considered that the £200 would be seen as a charitable donation, or grant, on behalf of the Parish. Although the sum was paid out of public money, the land did not then, and has not since, formed part of the assets of the Parish Council as a local authority, although treated as such in the annual reports of the council since the purchase in 1962.

It was confirmed that the first registration of the land in 2010 in the name of four trustees was not legal, but it was acknowledged that, following the intervention of the Parish Council, this has now been corrected. The VHMC's decision in 2011 to nominate the Official Custodian of Charities as Custodian Trustee on the Land Registry title, although very poorly handled, and without previously informing the council, was not unlawful.

The conclusion is that the Village Hall land was not and never has been within the beneficial ownership of the Parish Council as the local authority.

*Colin Marks, Clerk to Hormead Parish Council
October 2012*