

MINUTES OF LOCKERLEY PARISH COUNCIL ORDINARY MEETING

Held on Monday 15th March 2021 at 7.30 p.m. via Zoom

PRESENT: Parish Cllrs. Len Arthur, Sue Kent, Maurice Hillier, Helen Woodfield, David Jackson and Jane Waller. Also, in attendance was Borough Councillor Alison Johnston, Deputy Leader of Test Valley Borough Council Nick Adams King, clerk to the council, Sue Holder and 22 members of the public.

APOLOGIES: None received.

20/065 DECLARATIONS OF INTEREST: Cllrs Alison Johnston and Adams King took part in the meeting however will keep an open mind as to the determination of any application.

20/066 TO APPROVE THE MINUTES OF THE MEETING HELD ON THE 18TH JANUARY AND 2ND MARCH. The minutes of these meetings had been sent previously to all Councillors and were agreed to be a correct record of the meeting.

20/067 MATTERS ARISING FROM THOSE MINUTES: None

20/068 PROPOSAL BY GALLIFORDTRY TO INSTALL TELECOMMUNICATIONS MAST ON LOCKERLEY GREEN

i) Update from Mr P Funnell on the parish council's legal position in resisting the application and associated costs.

Mr Raymond Trickey gave the following report:

This report is for general use only and does not constitute professional or legal advice. At the extraordinary meeting of the Parish Council held on 2 March 2021 it was agreed that Peter Funnell, on behalf of the Parish Council, would seek independent professional advice to establish the Council's position in relation to the Communications Act 2003, the Digital Economy Act 2017 and the Electronic Communications Codes in addition to understanding the nature and strength of the Council's case in resisting the application for the grant of rights for a telecommunications site at Lockerley Green, a registered village green. In seeking such advice associated costs were to be established. As the Council knows I have offered to assist in the process and I have been liaising with Peter Funnell who has seen and agreed with this report.

Immediately after the meeting I spoke with a former colleague of mine who is a consultant with Blake Morgan which happens to be one of the three firms suggested by the Head of Legal Services at Test Valley Borough Council. Blake Morgan is a large firm of lawyers with offices in Cardiff, London, Oxford, Reading and Southampton. One of the partners heads a team of specialists in telecommunications law. However, once I discovered that some Councillors were having second thoughts as to paying for legal advice I asked for no further action to be taken. If required I would be happy to return to Blake Morgan but only with a clear mandate from the Council. To dispel any doubt there would be no question of spending the whole of the sum of £10,000 which I understand could be available from the former Lockerley Greens Preservation Society, such funds having been ring fenced for matters relating to the village greens. There would no question of allowing a lawyer to take a Court case unless the Council were to agree to that. I would prepare sufficient detail for the lawyer to be able to give a quotation for providing initial advice. Once that quotation is accepted by the Council I can then give the necessary instructions to the lawyer. Alternatively, the Council could stipulate a limit; it is difficult to say what that might be, but perhaps say £2,000 including VAT? I imagine that you would not wish me to proceed further at this

stage until you have satisfied your enquiries with both the Hampshire Association of Local Councils and also your insurers who might be able to provide cover for legal costs.

I believe that everyone is anxious to obtain an alternative site acceptable to the operator and that one may well be in the offing. This should be vigorously pursued because securing such a site should be the answer to everything. However, if there is no success in that direction or there is delay then I believe that really the Council should do everything to safeguard its position by obtaining professional advice in relation to the rights being requested by the operator and to avoid being caught out in some way.

I will not refer to the matter of a planning application or permitted development because I understand that you are discussing these aspects with Nick Adams–King. Running alongside but quite separate from that process would be the operator's attempt to enter into an agreement with the Parish Council for the grant of Code Rights under the Electronic Communications Code. If no agreement is reached the operator can apply to the Upper Tribunal for an order.

The Tribunal would be able to make an order if (and only if) it thinks that both of two conditions are met which are (1) that the prejudice caused to the Parish Council by the order is capable of being adequately compensated by money and (2) that the public benefit likely to result from the making of the order outweighs the prejudice to the Parish Council. In deciding whether this second condition is met the Tribunal must have regard to the public interest in having access to a choice of high-quality electronic communication services. **Consideration of the Parish Councils Position.** Certainly, the odds would not appear to be in favour of the landowner, but conceivably there may be some merit in arguing that the prejudice caused to the Council is not capable of being remedied by compensation. The Council holds the freehold as common land and as part of a village green for the benefit of the community and this situation possibly renders it impossible for the Council itself to be adequately compensated in money terms. In its letter to the Council of 16 February GallifordTry say, "Whilst we have attempted to value the land for consideration, we do not have sufficient information to assess the value of compensation and hence this would need to form part of our discussion". Their stated position may or may not assist in the argument. I think that the second condition is likely to present more of a challenge. A 2020 case referred to below shows that the level of prejudice has to be very high indeed to outweigh the public benefit. The case of University of London and Cornerstone heard in the Court of Appeal in November 2019 has been referred to you by Peter Ashby. Peter states "It says, in effect, we will lose our battle against Cornerstone, who are the company putting up masts for O2, for a mast in our locality". I have read that case and with respect to Peter this is just not correct. The case involved a University hall of residence opposite Paddington Station. Cornerstone sought Code rights solely for access for the purposes of undertaking a survey and investigation. In issue were the costs and clarification of the law for the future which was undertaken by setting out the provisions of the Code. There were no similarities to our situation and the case cannot act as any kind of precedent. I was interested to tumble across another case involving Cornerstone, this time with the University of the Arts London in the Elephant and Castle area. With my covering email to you I will include an article about that case from Landmark Chambers. It was heard in the Upper Tribunal in September 2020. I will not trouble with the detail as each case is decided on its own facts but sufficient to say that in that case the Tribunal found itself able to decide that the loss suffered could not be compensated in money and that the prejudice outweighed the public benefit. Cornerstone was unsuccessful.

To conclude Mr Funnell advised the parish council very strongly to take legal advice before entering into any communications with GallifordTry.

ii) Cllr Nick Adams King, Test Valley Borough Council Planning:

Cllr Adams King reported that no formal planning application had been submitted to Test Valley Borough Council from GallifordTry, although they have approached Planning Officer, Graham Melton, with a pre-application enquiry. Test Valley Borough Council are anticipating GallifordTry will submit a Permitted Development Application, which they would oppose due to the location and attempt to steer them towards an alternative site, which will be received more openly by the parish council and consequently a less troublesome way forward. The planning department have assured Cllr Adams King they will inform him as soon as an application is submitted. Cllr Adams King confirmed that all departments are consulted including landscape, ecology and conservation with a Permitted Development Application and supported any attempt to positively engage with the company.

iii) Special Motion proposed by Cllrs Kent and Woodfield: 'the Council do not at this time wish to engage the series of professional legal advice but concentrate their efforts into entering discussions with a view to finding an alternative site.'

The parish council were unanimously in support of the above special motion proposed by Cllrs Kent and Woodfield, which will reverse minute 20/064 (4). The parish council therefore resolved not to take legal advice at this time but to initiate open communications with GallifordTry to explain that whilst the parish council were in favour of an improved mobile phone signal for the village they would like the company to consider alternative sites. The parish council were not opposed to the prospect of appointing a legal representative at a later stage but hope to come to an amicable arrangement with the company by starting with positive engagement from the parish council now.

iv) Further updates / conclusion.

- The chairman reported that 4 alternative sites have been offered by local landowners for a telecommunications mast – a site in Holbury Lane, by the railway bridge past the church, behind the Goodridge family home and in East Dean.
- Mr Funnell and Trickey were thanked for their assistance so far.
- Cllr Coomer was appointed as the council representative in taking this matter further and will initiate communications with GallifordTry.

20/069 Open Forum and correspondence received

1. PF – reiterated that to take legal advice now would put the parish council in a position of strength.
2. LD – support of PF views.
3. CF – residents offer to help with cost of legal advice.
4. RD – be wary of this company who have so far just helped themselves without any permission. A few pounds now could save a lot more in the future.
5. AMW – need to keep the parishoners up to date in light of fast action being required.
6. MN – propose another development on the green that might preclude any planning or PD from the mast company.
7. LD – what happened to the vote at the EGM that Peter would seek much needed legal advice?
8. MQ – legal advice sought early could be prudent.

9. RD – reluctance to spend parish council money.
10. CF – Do the parishoners have a say in how parish funds are spent?
11. CF – we also support Peter.
12. AMW – when will these minutes be approved, how to communicate with parish?
13. RD – would you be more passionate if it were next to your family home?
14. MQ – Peter is a great spokesperson for the majority and continues to make relevant and valued points.
15. LD – A big thank you to Raymond and all his expertise. I wish he were being used further.
16. RG – Support Raymond and Peter suggestion of early advise and thank them.

20/070 TO RECEIVE A REPORT FROM TEST VALLEY BOROUGH COUNCIL

Cllr Alison Johnson gave the following report:

- Test Valley Borough Council have been under financial pressure during the pandemic but propose to utilise reserves held rather than make a large increase to council tax, which is anticipated to increase by £2.50 only for a band b property.
- The Environmental Bill is expected to receive Royal Assent in the Autumn which will deliver consistency in door-to-door waste collection services. This will however be a further financial burden on TVBC as new vehicles and skills will be required.
- Test Valley Borough Council are conducting a review of the Strategic Housing & Economic Land Availability Assessment (SHELAA).
- Hampshire county council elections are scheduled for this year with some socially distanced leaflet drops permitted.
- The Community Asset Fund and Councilor Community Grant scheme will open again from April. This year Houghton parish council received funding towards a speed indicator devise and Test Valley School, funding for a new animal area.

20/071 FINANCE

a) Current financial position:

Treasurers account (as at 14.02.21)	£7,065.29
Premier Interest Account	£21,668.30

Total Funds	£28,733.59
LGPS designated fund	£ £9,931

b) Payments for Approval: ® = retrospective

Website Costs ®	Replacement chq	£81.00	#1227
Lockerley primary school ®	Leaver's grant	£65.00	#1228
Thorngate Care Group ®	Grant	£100.00	#1229
United Benefice ®	Grant	£100.00	#1230

Native Rural ®	Playground fence repair	£154.32	#1231
S Water	Parish Room	£25.49	DD

β) **Grassing cutting contract.** The parish council approved the grass cutting quote sent by Mr Eastwood for 2021/22, which had been sent to councilors in advance of the meeting.

20/072 PLANNING

a) New applications (since last meeting):

21/00653/FULLS 10 Oval Road

Replacement porch

The parish council had no objection to this application.

21/00355/FULLS Halfpenny

Cesspit conversion unit and soakaway installation

The parish council made no comment on this application other than a note to the planners that the information about the Air Blower was insufficient. The plans do not show the position of the housing for the air blower. Neither is there any indication of possible noise levels. As the blower can be located up to 25 meters from the tank this could possibly be a nuisance for some of the neighbours.

b) Decisions received from TVBC: None

20/073 CORRESPONDANCE

All correspondence had been sent to councillors before the meeting.

- Telecommunications mast – various
- ES – parking at Butlers Close. Aster have now agreed to write to all residents to ask for consideration when parking.
- JP – catering from scout hut. It is understood that the scout committee have given permission for 4Nature to use the kitchen facilities at the scout hut but not to sell from there.
- Mid Test matters 21.

20/074 DATE OF NEXT MEETING: 19th April (Annual Parish Meeting)

There being no further business the chairman closed the meeting at 9.26pm.