

Minutes of Extraordinary Meeting of
BRIDGE PARISH COUNCIL MEETING

Minutes of the meeting held on Friday 2nd November 2007 in Bridge Village Hall

Present; Cllrs Edmonds (Chairman), Beesty, Beinder, Corfield, Esdale, Hill, Lewis and Wilmshurst.

Also present Richard Honey (Barrister) and 38 residents of Bridge

64/07-8 Apologies for absence; There were apologies for absence from Cllr. Gulvin; City Councillor, John Anderson and County Councillor, Michael Northey.

65/07-8 Declarations of Interest & Lobbying on Agenda Items. None

66/07-8 To agree a response to the request that the Parish Council should act as plaintiff in a Judicial Review of the planning consent granted by Canterbury City for 24 High Street (ref CA/07/00687)

Mrs Emily Shirley outlined the reasons why the Parish Council should act as the claimant (plaintiff and claimant are interchangeable terms with "plaintiff" being older and "claimant" used these days for clarity): It would send a clear message to the City Council that Parish Councils should be taken seriously; The Parish Council's role is to act on behalf of villagers; An action with a Parish Council as claimant would be more effective than a loose group of villagers.

Mr Richard Honey, a barrister in property law, explained that he had been instructed by the Kent Law Clinic to look into the case. He explained the working of a Judicial Review – that it is a review of whether the decision was taken properly, not whether the planning consent was right or not. The first step is to ask for permission to take the case to court. This is decided by a single judge who will examine letters from each side, stating their case. If the judge refuses to grant permission, then the claimant can appeal and ask that the question be heard in court. If then, the court agrees, or the single judge had consented in the first place, then a trial is set. The trial would take one day, in the High Court in London. There will be a delay between permission being granted and the case – probably a year, but at least six months. At any point in the process, the claimant can simply withdraw.

The first stage, therefore, is to put the case to the judge for permission. The City Council then respond in writing. If, at that point, permission is refused, then the claimant would have to pay the City Council costs – about £2,000.

There is a tight time limit to bringing a case. It must be done within 3 months, but must also be done "promptly", this means that the claim needs to be started in the week commencing 5th November. Mr Honey had advised the residents who engaged him, to approach the Parish Council to be claimant - on similar grounds to those stated by Mrs Shirley: The Parish Council is representative of the community; it is a single body and thus administratively easier to work with; It is an authoritative body and thus on equal terms with the City Council.

Mr Honey explained that there were four grounds for challenge: The first two were about policy and statutory duty relating to the effect of the setting of a Listed Building. The committee did not adhere to the legal requirements for applications affecting the setting of a Listed Building; The planning committee has a legal duty to give reasons as to why permission was granted. The grant referred only to the officers' report, this is insufficient in law, as councillors must give their own reasons; The fourth ground is factual inaccuracy. The report stated that "there is only space for off road parking for one vehicle. Although the planning permission for the conversion of the outbuilding close to the house to garaging has been implemented, the resultant garages are too small to house modern day sized cars." This is a clear factual error and thus the committee may have been misled into believing there was a "need" for this

development. It was noted that of the 15 councillors at the development control meeting, only 3 of them had attended the site meeting.

Mr Honey felt there was a good arguable case and the claimant would be more likely than not to win. He had asked a fellow barrister to review the case based purely on the letters to and from the City Council – he agreed there is a case with “a reasonable prospect of success”

On the matter of costs running out of control for the claimant, should they lose, Mr Honey explained that there was a mechanism called a “pre-emptive cost order”. In a case that is in the public interest, the claimant can ask the court to fix a cap on costs. There are very strict rules governing such orders and it is unlikely that a group of parishioners would be granted a cap, but a Parish Council might.

The next step in the case would be to gather all the documents together, get witness statements (two had already been done) and prepare the grounds for the case.

There were then questions from the floor and from Councillors:

If the claimants win, what happens? If the Judicial Review decides in favour of the claimant, then the planning permission is quashed. The application would go back to Canterbury City Council for reconsideration. The committee would consider the application with regard to all the evidence – the setting in the context of the Listed Building and the lack of need of a car port may tip the balance. The City Council have claimed that the decision will be exactly the same. It was suggested from the floor that this was a good reason to bring the case. If the City Council refuses planning permission, then the application can take the case to appeal and the matter would be out of our hands. However, Planning Inspectors tend to take Listed Buildings and Conservation Area into account more than local planners.

Given the developer has been granted permission, can't he just build the car port anyway? Yes, he could. However, if the planning permission was quashed, then he would have a building without permission and enforcement may require him to take it down.

How much will it cost? The details of costs could not be discussed in a public meeting, but if the case went all the way through and the claimant lost, they would be liable for the City Council's costs too – and these would be a large amount. However, the costs could be limited (as above) and the claimant can withdraw at any point. The Parish Council does have a contingency fund and it was suggested that this case was a “rainy day”. As the case, if heard in court, would not be until the next financial year, extra funds could be raised by precept.

The whole object of the case was questioned – was it to quash planning consent or to try and establish a point of principle with the City Council? While the *object* of the case is clearly to have the decision reviewed, the *motivation* of the case may be different. Although there is a chance the City Council may reach the same conclusion as before and grant permission, the role of the Judicial Review process is to ensure public bodies take their decisions properly.

It was questioned whether parking was a planning matter or not. Although the provision (or lack of provision) of parking is not generally a planning matter, the applicant used the parking as a “need” for development, thus making it a planning matter.

It was asked that once the letters had been sent, what were the chances of the City Council pulling out at that point? If the judge gives permission for the case, there is a good chance that the City Council would pull out- a similar case in Maidstone was cited. If the City Council simply revokes the planning permission, then they would be

liable to pay the developer compensation. However, they can agree to the court making the decision and thus quashing the consent.

It was asked what impact this would have on relations with the City Council. The chairman read out a letter from Cllr Gulvin, who stated that the message had been "received and understood" by the City Council and that further action would damage relations. It was pointed out that there were several other projects where the Parish Council was seeking assistance from the City Council and that taking action against them might jeopardise those initiatives.

The Parish Council shouldn't be fighting the City Council - there should be a mutual understanding. However, if the City Council oversteps the mark, this is a good method to keep the City Council in check. There are other, possibly more major, developments to consider in or around the parish in the near future and if the Parish Council lies down over this case, then it would be harder to fight future cases.

If the Parish Council started the action as claimant, then chose to withdraw, then it might be possible, but difficult, for another party to take over the claim.

The Chairman put the question: "To agree for the Parish Council to act as claimant and to go to the first stage at least - to ask the judge for permission - then to review the situation at each stage." A vote was taken, which proved unanimously in favour of the question.

66/07-8 To agree that in pursuance of the powers conferred by S.137 of the Local Government Act of 1972 (as amended) and being of the opinion that the expenditure satisfies the requirements of that section, the council approves the expenditure of up to £2,000 to support the plaintiff in the Judicial Review (above)

This was agreed unanimously.

The next meeting of Bridge Parish Council will be on Thursday 8th November 2007 at 7.30 pm in Bridge Village Hall.