



HEADLEY PARISH COUNCIL

Minutes of an **Extra Ordinary Meeting** held at
The Octagon, St Mary's Church, Headley at 7.30pm on Monday 5th December 2022

	In attendance	Apologies	Absent
Cllr David Preedy (Chair)	✓		
Cllr Jon Lavery	✓		
Cllr Jane Pickard	✓		
Cllr Paul Furr	✓		
Cllr Nick Woolley	✓		
Cllr Ben Jarvis	✓		

In attendance: Tracy Hamer (Clerk) taking the minutes, 23 members of the public.
The meeting was chaired by Cllr Preedy.

Agenda Item	Issue	Actions
1	To receive and accept apologies of absence. County Councillor Hazel Watson.	
2	To receive any declarations of interest relevant to items on this agenda. Nil.	
3	To sign as a correct record, the minutes of the Parish Council Meeting dated 28th November 2022. The Council resolved to unanimously agree the content of the minutes and the Chair signed the minutes. <i>Proposed by Cllr Pickard and seconded by Cllr Woolley.</i>	
4	To discuss and confirm the decision on whether the Parish Council will initiate a Judicial Review in respect to Headley Court MO/2021/0871 RM appeal decision. Cllr Preedy took some time to explain the format of the meeting. It was formally noted that Headley Parish Council (HPC) were unable to make a decision regarding the request from Headley Residents Action Group (HRAG) to initiate a Judicial Review at the meeting dated Monday 28 th November 2022 and deferred the decision to this Extra Ordinary Meeting, allowing time for advice to be taken from various sources and formulate a risk assessment (Appendix 2). Members of the public will be given opportunity to provide relevant information. <i>Appendix 1 – <u>Supplementary Information</u> outlines the aforementioned advice.</i> Members of the public in attendance and HRAG members expressed concern and surprise in the requirement to disclose third party involvement, to identify the source of funding, to enable Aarhus Cost Protection (ACP). Cllr Furr noted that the entire	

village would be paying associated costs via a significant increase in the precept if an agreement cannot be met to meet the fees.

Cllr Jarvis suggested that crowd funding might alleviate the need for disclosure.

The Clerk suggested that further detail should be sought as a matter of urgency and that an Extra Ordinary Meeting should be called for Friday 9th December to make a final decision.

Councillor Preedy pointed out that the proposed legal firm are aware of the situation and ready to start work immediately, although they expressed concern that a further delay would not allow time to complete the necessary work in the legal timescale available to launch a JR.

The following resolution was proposed by Councillor Preedy and seconded by Councillor Jarvis:

Headley Parish Council is required to take urgent advice on the following issues to enable a considered and informed decision to follow on Friday 9th December:

- **Key information regarding level of disclosure regarding financial input from individuals;**
- **An outline of costs and associated timings (latest date) required to lodge with court;**
- **Does crowd funding effect the requirement for disclosure;**
- **If HPC are liable for third party costs if ACP is not granted, what is the sum likely to be;**
- **If ACP is not granted, are we able to stop proceedings immediately and is there a cost associated element to this;**

In addition to this, Headley Parish Council will nominate a total sum of £5,000 (excluding VAT) to instruct a solicitor to begin proceedings to ensure timings can be met should the decision to initiate a JR be taken on Friday 9th December 2022. Beyond this, HPC will require written assurances that the full potential costs (to be determined) would be covered by third party contributions.

Members were given the opportunity to comment on the resolution prior to taking a vote:

Cllr Pickard – raised the question that would a JR would facilitate the desired outcome, which in general terms is to reduce the proposed density of housing.

Cllr Laverty – concerned that the marginal benefits are outweighed by the financial risks to the Parish Council and that HPC need to be wholly assured there is no risk and that the entire community are represented. In the event of a financial shortfall, this would have to be funded by an increase to the precept requirement.

Cllr Furr – wished to echo Cllr Laverty’s concerns and noted his concern about open ended costs and the associated risk factor to the Parish Council.

Cllr Jarvis – noted that he feels the planning process has failed the community and supports a JR.

	<p>Cllr Woolley – expressed concern that the sum of £5,000 is a large portion of HPC cash assets but feels that advice should be sought.</p> <p>Cllr Preedy – noted that the above discussions put the Parish Council in a hugely difficult decision with a wide range of views to consider. From a personal perspective, Cllr Preedy commented he would like to see a final stand made, but remains concerned about the financial risks to the Parish Council.</p> <p>In favour: 5 Against: 1</p> <p>HPC authorised the Clerk to make an electronic payment to Richard Buxton Solicitors up to the sum of £5,000 (excluding VAT) to instruct and initiate the process.</p>	
5	<p>To discuss and confirm 2023/24 Budget and Precept requirement. This item was deferred until Friday 9th December 2022.</p>	

To confirm the date of the next Parish Council Meeting as Friday 9th December 2022 at 4.30pm at The Octagon, St Mary's Church, Headley.

There being no further business, the meeting closed at 10pm.

Signed
Dated

Chairman

Appendix 1 – Supplementary Information

At the HPC meeting on 28th November the Parish Council agreed to defer deciding whether to take active involvement in pursuing a Statutory Review of the recent appeal decision on the residential development planning application at Headley Court. (Note – for the purposes of this note we are using the terms Judicial Review & Statutory Review interchangeably). This note summarises the supplementary information obtained through various enquiries undertaken by the Clerk & Chair.

Sources of information

- 3 firms of solicitors specialising in planning – Richard Buxton, Paris Smith & Burges Salmon
- Environmental Law Foundation
- SALC – planning specialist
- SALC – Governance specialist
- Mole Valley District Council (as LPA)
- Background Internet searches
- Discussions with HRAG representative

Governance issues

- A Parish Council is within its powers to lead a Statutory review process; several have done this with mixed success;
- The Parish Council needs to ensure that it has the funds in place to meet all liabilities; otherwise, it will have to borrow and reclaim from residents via the precept;
- In our case the expenditure involved will trigger an External Audit which could qualify the accounts if due process has not been followed;
- A key part of the due process is that the decision is correctly taken and is informed by a written Risk Assessment (appendix 2);
- Whilst advisers recognised the importance of acting to support local residents and reflect their wishes, they pointed out the small size of the Parish Council in terms of financial and human resources;
- The Parish Council has to be able to identify the sources of any funding

Aarhus Cost Protection (ACP)

- ACP provides in certain circumstances for members of the public leading a legal case on environmental grounds to be protected by a cap on their potential liability for the legal costs of other parties which could arise if the case is unsuccessful;
- The “standard” caps are set at £5k for an individual, £10k for other legal bodies, and £35k for the defendant.
- The court may vary the cost cap (from the standard amounts) in the light of the claimant’s financial resources or if costs are objectively unreasonable;
- The claimant has to provide details of their financial position to claim ACP; this includes considering any financial support that any person has provided, or is likely to provide, to the claimant.
- There is no checklist against which a claim for ACP is assessed; rather it is the view taken by the judge hearing the application;
- The decision re ACP will be made at the same time as the decision on right to proceed with the Review;
- Case-law has established that a Parish Council can be regarded as a member of the public in this case and can apply for ACP. If successful, this normally caps the liability at £10k;
- There is differing advice on whether the Headley Court case would necessarily be eligible for ACP; certain sources report that almost any planning application could be regarded as having an environmental impact and we are told that the HRAG barrister believes it could be secured; however, we also have been told

that it is not automatic, and that Green Belt protection is not environmental factor. Most of the well-publicised cases we have seen relate to cases with a clearer environment impact, such as threats to a recognised environmentally sensitive area

Financial exposure

- The PC is very small compared to of the Parish Councils who have led Statutory or Judicial Reviews. For example, recently cited cases include:
 - Headley PC - Cash & Short-term Investments £31k (Mar 22); Annual income £15k (21/22)
 - Dunsfold PC – Cash & STI £155k (Mar 21); Annual income £138k (20/21)
 - Chiddingfold PC – Cash & STI £233k (Mar 22); Annual income £153k, (21/22)
 - Crondall PC - Cash & STI £75k (Mar 22); Annual income £95k, (21/22)
 - Thurston PC - Cash & STI £370k (Mar 22); Annual income £446k, (21/22)
- Given our size, the Parish Council does not have the resources to afford any other than nominal financial support for the case. In these circumstances we will need:
 - Up-front payment of any potential liabilities before we act which may incur them;
 - Watertight indemnities from funding contributors that they will cover any consequential costs that may arise from the action;
 - Personal assurances that they understand that they should take separate legal advice before agreeing to these indemnities, and have had the opportunity to do so;
- The costs of pursuing the SR are hard to estimate. We have received the following indications:
 - If we win we would only pay our own costs - £30-40k, i.e. over 2 times the PC's Annual Precept
 - If we lose having been granted ACP, costs estimate is £40-50k, i.e. about 3 times the Precept
 - If we lose without securing ACP, cost estimate is "in six figures" and highly dependent on the resources deployed by interested 3rd parties, i.e. 7+ more times the Precept;
 - If we drop the case immediately, we are told we are not eligible for ACP, then we would be liable for all parties' costs, ie our own, PINS & interested 3rd parties; we have been advised than in other cases, developers have incurred significant expenses arguing against the SR being heard and against granting of ACP. In these circumstances cost liability could be £40-50k, ie about 3 times the Precept

Strength of case

- It is important to bear in mind that the case for a Statutory review has to be based on errors in law and not simply that we disagree with the decision.
- Moreover, the prospect of success is explicitly recognised as one factor affecting whether potential costs are objectively unreasonable.
- The consensus seems to be that there is no single factor that on its own provides a solid case.
- Specifically various sources have advised us that the decision to determine the Appeal based solely on written representations does not **on its own** carry sufficient weight. However, that could be used as a factor explaining why other mistakes were made since the Inspector and local residents were unable to test submitted evidence by questioning. These issues include:
 - Errors in the Decision Notice:
 - Status of entire site – the report incorrectly states that the entire site was allocated as a Housing Site under the current Local Plan;
 - Very Special Circumstances – having decided that the application constitutes inappropriate development in the Green Belt, the Report fails to explain what VSC are used to justify it
 - Height of buildings on the Northern portion
 - What was agreed in the Parameters Plan alongside the Outline permission

- Incorrect assumptions made
 - Previous activity levels on the Northern portion
 - That reverting to “currently permitted use” would generate previously asserted traffic levels, ignoring that several large buildings are no longer permissible so capacity would be much less
- Failure to test evidence by questioning
 - The evidence submitted by HPC and others about the interpretation of non-time-limited personal permissions should have been heard and questioned, especially as there is no legal precedent for these circumstances. Instead the Inspector decided simply to discard the arguments put forward
- Exact meaning of Outline permission
 - The Appeal Report depends critically on what was agreed in granting Outline permission. It could be argued that the Inspector assumed that the impact of the illustrative layout on the Green Belt had been accepted, even though the layout and scale of buildings were explicitly removed from the Outline permission which was “with all matters reserved other than Access”
 - This also raises the issue of whether the Committee granting the permission were correctly advised when they were told, for instance, the what they were approving might be bungalows, not 2-storey houses.
 - This in turn raises the challenges faced by that Committee taking place in the early days of Zoom meetings, with an inexperienced Chair dependent on limited access to Officers (via WhatsApp)
- In summary the case relies on a number of factors, and this weakens its strength.
- We understand that MVDC does not believe that there are sufficient errors in law for it to consider acting.

Impact of Statutory Review if successful

- If the SR is successful, when the Appeal is re-heard an Inspector might still approve it; in that case all that would have been achieved is a delay
- If this application is ultimately rejected, nobody has opposed the principle of some redevelopment; so, it is just the quantum of development that could be reduced; this would however reduce some impacts such as traffic levels generated.

Impact of PC not leading Statutory Review

- Other individuals still would be able to initiate a review and make a claim for ACP.
- Indeed, the default cap would be less at £5k (provide the claim is not being made on behalf of another legal body), rather than £10k for the PC, and the cap is inclusive of VAT.
- The Parish Council would have the option of provided some funding to support such an individual, although this would be constrained by its available resources.

Risk Assessment for Headley Court Statutory Review

Probability	Score	Consequence	Score
Unlikely	1	Insignificant	1
Seldom	2	Marginal	2
Occasional	3	Moderate	3
Likely	4	Critical	4
Definite	5	Catastrophic	5

E = Extreme
 H = High
 M = Medium
 L = Low

Probability	5	M	H	E	E	E
	4	M	M	H	E	E
	3	L	M	M	H	E
	2	L	L	M	M	H
	1	L	L	L	M	M
		1	2	3	4	5
		Consequence				

	Activity	Hazard	Impact	Probability (1-5)	Consequence (1-5)	Risk Rating (Before Controls)	Mitigation Controls	Probability (1-5)	Consequence (1-5)	Risk Rating (After Controls)
1	Strength of legal case	A weak case is more likely to lose SR	Case is lost	4	2	M	None	4	2	M
2	Strength of legal case	A weak case may not be granted leave to proceed with SR	Case does not proceed	3	2	M	None	3	2	M
3	Strength of legal case	A weak case may affect whether costs are viewed as objectively unreasonable	ACP is not provided	2	5	H	None – but see Risk 4	2	5	H
4	Fail to secure ACP	Liability for costs of all parties		2	5	H	Abandon SR if not eligible for ACP	2	4	M

	Activity	Hazard	Impact	Probability (1-5)	Consequence (1-5)	Risk Rating (Before Controls)	Mitigation Controls	Probability (1-5)	Consequence (1-5)	Risk Rating (After Controls)
6	HPC has to fund all or part of SR	Need to borrow funds and recoup via Precept increase		5	5	E	Indemnity agreement that funders are liable for all consequential costs	3	3	M
7							Require up-front payment before work is commissioned	2	3	M
8							Require additional up-front payment of potential liability to other parties costs	2	1	L
9	HPC cannot disclose sources of funding	Investigations into money-laundering or Rule of Champerty	Significant PC legal fees	5	3	E	Require identity of donors to be made available Also have full pre-payment agreement	1 1	3 1	L L
10		Reduced chance of ACP eligibility		4	5	E	Require identity of donors to be made available Abandon SR if not eligible for ACP Also have full pre-payment agreement	2 2	4 1	M L
11	Funders regarded as unconnected	Rule of Champerty	May threaten ACP protection	3	5	E	Require identity of donors to be made available Abandon SR if not eligible for ACP Also have full pre-payment agreement	1 1	4 1	M L
12	HPC faces External Audit	Closer investigation of decisions	Qualified accounts Reputation damage	3	2	H	Ensure decisions fully documented and follow correct process	2	2	L
13	Tight timescales for initiating JR	Decisions have to be taken on incomplete	Unknown factors may introduce unknown risks	4	3	M	Adopt precautionary approach to unknown risks	2	2	L

	Activity	Hazard	Impact	Probability (1-5)	Consequence (1-5)	Risk Rating (Before Controls)	Mitigation Controls	Probability (1-5)	Consequence (1-5)	Risk Rating (After Controls)
		information & knowledge								
14	HPC decide not to lead SR process	Chance of reversing Appeal decision is lost	No chance of less intrusive development	5	2	H	Other parties could initiate SR	3	2	M

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