



MINUTES

Extraordinary Meeting of Handforth Parish Council Tuesday 27th August 2020 at 7.00pm PART A Held Virtually with MS Teams

Present:

Cllr Brian Tolver - Chairman of the Council
Cllr Barry Burkhill
Cllr Aled Brewerton
Cllr Cynthia Samson
Cllr John Smith
Cllr Susan Moore
David Naylor - Bollington Town Council Clerk Facilitating the Teams Meeting

4 members of the public were present

20/09/1 **To receive and note any apologies for absence.**
Apologies for absence: Cllr Jean Thompson; The Clerk: Ashley Comiski Dawson

20/09/2 **To note Declarations of interest** and requests for dispensation to discuss, or discuss and vote on a matter in which a Member or co-opted Member has a Disclosable Pecuniary or non-pecuniary interest (DPI)
There were no declarations of interest.

20/09/3 **Open Forum-** Comment and questions concerning items on this agenda put to the Council by the public during this period. Matters which, in the Chairman's view require debate and/or a discussion will be referred to the next Council or Committee meeting, as appropriate. The Public Forum is restricted to 15 minutes, unless the Chairman allows otherwise

Four speakers:

The first speaker asked who prepared the agenda in the absence of the Clerk. The Chairman replied that he had. The same speaker then enquired why it had not been published on the website or noticeboards. The Chairman replied that the Agenda was published on two noticeboards in the centre of Handforth, the statutory requirement was one noticed in a prominent place. The Clerk's absence had limited notification other than the statutory requirement. The same speaker asked why Cheshire East Council had published a casual vacancy for Handforth and yet this meeting invited a full complement of seven councillors to attend. The chairman advised that there were personal issues to discuss around this, which would take place within Part B of this meeting and appropriate information would be made public in due course.

The second speaker enquired: Regarding the Council's new website, what information and links to other websites would it contain such as maps and pathways through the Parish. The Chairman advised that Handforth had needed to move to a new website "platform" and currently there were some issues that needed rectifying before the content was expanded.

The same speaker asked about planning applications, he could not find any, was there a backlog? The Chairman advised that all planning application had a consultation deadline and once that had expired there was no point in sending a response. The Council had not held a meeting since March due to the pandemic and, therefore, there had been no responses on planning. This current meeting, using the Teams system, was the first since then.

The third speaker advised that he was very pleased to see the Disaster Management Plan on the agenda.

The fourth speaker: asked where the Council had been since March when other Councils had managed to hold meetings virtual meetings? He felt that this was an unacceptable situation.

20/09/4 **To approve and sign the minutes** from the Handforth Parish Council Meeting of 10th March 2020. The minutes were displayed on the screen.

Councillor Smith advised that he had not had a copy of the minutes. The Chairman advised they were sent that morning with the briefing papers.

Councillor Smith was unhappy that they had been sent so late. This was echoed by Councillors Samson and Moore.

Cllr Smith proposed that this **Agenda item 4, and items 5, 6, 7 and 8 be deferred** to give members sufficient time to read them. It was **RESOLVED** to defer these items (unanimous).

20/09/5 To approve and sign the minutes from the Handforth Parish Council Planning and Environment Committee meeting of 10 March 2020.

This item was deferred as per Minute 20/09/4

20/09/6 To approve and sign the order of payment of accounts for the following months and to allow questioning of items of expenditure:

April 2020

May 2020

June 2020

July 2020

August 2020

This item was deferred as per Minute 20/09/4

20/09/7 MOTION: To consider, approve and sign the Accounting Statements for 2020/09.

This item was deferred as per Minute 20/09/4

20/09/8 To receive the report of the Internal Auditor.

This item was deferred as per Minute 20/09/4

20/09/9 To confirm the Council's eligibility criteria to exercise the General Power of Competence; with requirements of two thirds of members elected and the Council had appointed a CiLCA qualified clerk.

It was **RESOLVED** to confirm the eligibility to exercise this power (unanimous).

20/09/10 To review and agree the office lease at Handforth Youth Centre with Cheshire East Council at £3,500 per annum.

It was **RESOLVED** to agree the lease (unanimous).

20/09/11 To review Handforth Parish Council's Insurance provision.

It was operative from 1 June 2020. It was **RESOLVED** to defer this item for more detailed scrutiny (unanimous)

20/09/12 **MOTION:** To consider the grant application from St. Benedict's School of £480.00 towards the cost of new planters.

Councillor Samson felt that this was a very good cause and it was **RESOLVED** to approve the grant (unanimous)

20/09/13 **MOTION:** To agree and accept a Handforth Parish Council Disaster Management Plan which can only be invoked at times of extraordinary emergency; such times being defined as: a declaration of national emergency by the national Government of the day; declaration of a pandemic; declaration of a national epidemic; any other national or regional emergency which would curtail the normal day to day transaction of business by Handforth Parish Council. Proposer: Cllr Brewerton

Cllr Smith had a number of corrections and he would email them to Cllr Brewerton and the other members for inclusion.

Cllr Brewerton had also made two minor changes and proposed that he would re-issue the Plan with these amendments and the decision be deferred until then.

It was **RESOLVED** to defer the Plan to the next meeting (unanimous)

20/09/14 **MOTION:** To consider establishing a Handforth Parish Council emergency fund of £10,000 to be used in times of emergency (as defined the Disaster Management Plan). Spending from this to be agreed by the Chair of the Council and either the Chair of the Finance Committee or the Vice-Chair of the Council should it be impossible or impractical for the Council to meet to approve such spending. All such spending to be via charities or social agencies. Proposer Cllr Brewerton
It was **RESOLVED** to defer this decision until the next meeting to coincide with the decision regarding the Disaster Management Plan (unanimous).

20/09/15 **MOTION:** To consider the current layout and content of the new Handforth Parish Council website and to allow Councillors to comment thereon.

Councillors should notify the Clerk (as editor of the site) in writing or by email, of any textual or technical faults they identify, for forwarding to the website manager.

The chairman advised this was sprung on him as well as everyone else. He was introduced to the new layout about the month ago to have a look at it with a view to rolling it out to all the councillors for comment, however, suddenly a week or so ago it became the new Handforth website.

Cllr Smith felt the website was not intuitive and easy to use and should still be in the hands of the software people to resolve the issues.

It was **RESOLVED** that members notify the Chairman of faults with the new site and also to visit the Wilmslow's website which was a very good site.

20/09/16 To set a date for the next meeting of the Council.

It was **RESOLVED** to deferred this date for the present until it was known when the Clerk was likely to return.

20/09/17 To exclude the public from the remainder of the meeting due to the confidential nature of the business.

It was **RESOLVED** to move to Part B and the public be excluded due to the personal nature of the matters to be discussed (unanimous).

The meeting ended after 1hour and 14 Minutes

Chair.....

Date.....

PART B

Present:

Cllr Brian Tolver - Chairman of the Council

Cllr Barry Burkhill

Cllr Aled Brewerton

Cllr Cynthia Samson

Cllr John Smith

Cllr Susan Moore

David Naylor - Bollington Town Council Clerk Facilitating the Teams Meeting

No members of the public were present due to the personal issues being discussed

20/09/17 **Public Bodies Admission to Meetings Act 1960.**

Exclusion of press and public due to the business of the meeting being of a confidential nature.

The meeting **RESOLVED** to exclude the public

20/09/18 **To receive and accept a report from the Employment Committee.**

The Chairman, Cllr Tolver, opened the meeting by advising that there had been a breach of confidentiality from the Employment Committee meeting, someone had discussed the business of the meeting with a person at Cheshire East Council. The information could only have originated from a member of the Committee and all were present today at the Council meeting. He asked if the person who had done this or had knowledge of it would be willing to explain. No one came forward.

Cllr Burkhill, Chairman of the Employment Committee, advised that there was no specific report other than the Minutes of the Employment Committee and its recommendations to Council. He proposed to use these as the basis for the discussion and final resolutions.

He moved that the minutes be approved as a correct record and that the minutes be adopted.

It was **RESOLVED** that the Minutes be adopted as an accurate record of the meeting by a majority vote. Cllrs Smith and Cllr Moore voted against this. Cllr Samson also objected but she was advised that she was not a voting member of the Committee.

There was concern from some members that the minutes did not represent all that was discussed. The minute taker advised that the meeting lasted almost 1.5 hours and he had supplied the video recording to all members which was a full and unedited record. He was not asked to provide a written transcript but in the usual manner he had detailed the various concerns of all parties and the resolutions of the Committee.

It was alleged during the Employment meeting that an email had been sent from one member to another which was mistakenly copied to all members. It was inappropriate to include the text of that email in the minutes. There were no specific requests to make changes to the minutes.

Cllrs Smith, Moore and Samson all highlighted the lack of the report which was promised on the Agenda. The Chairman advised that all members were present at the meeting and were fully informed of what was discussed and had the video recordings on the Wednesday, the day before this Council meeting. Cllr Samson pointed out that she had not received hers because it had been sent to the Handforth.org.uk account. She had finally been able to open it at 11am on the day of this meeting.

Cllr Smith advised of a QC's article entitled "Coronavirus and local authorities" The QC was a member of the 11KBW Chambers in London.

One of the matters in the article concerned disqualification under section 85 of the Local Government Act 1972. He stated that "*disqualification under the section 85 rule had not been lifted and it was important to watch out for the case law of Northern Ireland provision - Neeson and Hogan. In England the time runs from the member's last attendance not absence*".

Cllr Smith pointing out that the Employment Committee's calculation of the date in July was, therefore, incorrect. In England it runs from the members last

attendance which was November. Therefore May 12th would have been when the member self-disqualified.

He made the point that this was at variance with the barrister's report referred to by Councillor Brewerton the contents of which had not been seen.

Cllr Brewerton responded by stating that this was not relevant because Handforth were not dealing with six months, we suspended meetings, therefore the May date was legally redundant because there were no meetings to attend after March.

Cllr Brewerton had spoken to the barrister and the barrister had agreed to provide a copy to members but the breach of confidentiality to Cheshire East Council had now prevented him from producing it. Nevertheless, he would read out the 2 relevant advice paragraphs from this opinion which were:

Paragraph 1

I am pleased to advise that the authorities on this point are clear, if no meetings are held in the relevant period there will be no failure to attend a meeting (para 289 of volume 69 2018 Publication of Halsbury's Statutes of England which have not changed this year). I am therefore able to emphatically endorse the interpretation of the 1972 act. The decision to suspend Council meetings due to the COVID-19 Pandemic stopped the clock for the purposes of the act.

Paragraph 2

The qualification period, and this is set down in case law and accepted in this country, is that if 10th December 2019 was the first meeting councillor failed to attend, even had Council business not been suspended, the decision to disqualify Cllr Thomson on 9 June would have been premature and is ultra vires.

Cllr Smith asked why the QC had stated that dates contained in the Neeson case are not relevant in England. This was clearly at odds with Cllr Brewerton's barrister's advice. Who should Handforth believe? Cllr Brewerton advised that we are not aware of the instructions given to the QC and the actual circumstances are important.

Cllr Smith felt that in the absence the having a copy of the instructions being given to the barrister by some members of HPC and the absence of the actual opinion these are being filtered through Councillor Brewerton and this was unacceptable.

Cllr Burkhill advised that that the Barristers opinion would have been presented in full to this meeting tonight but that had been prevented by the confidential information leaked from the Employment Committee to Cheshire East Council.

Cllr Smith very concerned that the Clerk had not had any sight of the barrister's opinion or the case against him - that was not fair.

The issue that Handforth Town Clerk had invoked powers to disqualify Cllr Thompson were rejected by Cllr Samson, Cllr Smith and Cllr Moore because he had merely following electoral law.

Cllr Samson advised that it seems very likely that this meeting would conclude unlawfully that Cllr Thompson was still a councillor and therefore Cheshire East needed to be informed following the meeting so they could respond. She felt that that the Parish Council would then be acting illegally and Cllr Burkhill, Cllr

Tolver and Cllr Brewerton in supporting this stance would be breaking electoral law.

The Chairman read out an email from Cllr Samson to him (with her permission) which said *Cllr Tolver I have had time time to digest your email and I have come to the conclusion that the contents are intimidating and bordering on bullying, The email was shared to me by the parish clerk (this was the email that was read out by cllr Samson at the Employment Committee).* She continued: *it was on Handforth's IT system and anyone requesting an FOI would result in the Clerk having to provide it. I will be taking my own independent advice from the ICO tomorrow and when I receive their findings, I will share them with the rest of the Council until that time I will not be destroying the email as you have dictated.*

It was countered that personal information or information that can identify an individual could not be released in an FOI request

Councillor Burkhill then moved the recommendations to Council from the Employment Committee be approved. This was seconded by Cllr Brewerton.

The Motions

- 1)** That in the light of evidence obtained concerning the actions of the Clerk in informing Cllr. Jean Thompson that she no longer holds her position as a member of Handforth Parish Council, without obtaining proper legal advice, the Clerk be instructed to
 - a) Withdraw all notices to that effect from noticeboards in and around the village and from the HPC website.
 - b) To announce in the same places as in (a) that the notices were posted in error.
 - c) To notify Cheshire East Council Democratic Services that a casual vacancy does not exist on Handforth Parish Council.
 - d) To furnish a written apology for his actions to Cllr. Jean Thompson.
- 2)** That the Employment Committee be given full authority on behalf of Handforth Parish Council, to conduct an independent led investigation into matters relating to Handforth Parish Council's Clerk.

Cllr Smith asked what statute or legal reference would be used by councillors voting in favour of the resolution to reinstate Cllr Thompson and reversing a self-disqualification.

Cllr Burkhill then moved that:

The Barrister's advice received, in the form of the two paragraphs read out by Cllr Brewerton, be accepted as the legal advice to Handforth Parish Council.

It was **RESOLVED** to approve the status of that advice by Cllrs Tolver, Burkhill and Brewerton. Councillors Samson, Smith and Moore voted were against this because they had not seen it in full. The Chairman used his casting vote in favour

Cllr Smith asked for it to be minuted that Handforth Parish Council funds would not be used for further legal advice because they had already received it. This was confirmed by Cllr. Burkhill.

Cllr Samson advised that she hoped the members voting in favour of this would take the consequences for what may happen.

Cllr Samson warned that Handforth Parish Council could be placed in special measures or the equivalent for acting in this manner.

Cllr Samson was asked if other members could join the Employment Committee. The Chairman replied that the Employment Committee's Council- approved Terms of Reference would not allow that.

It was **RESOLVED** to approve the above motions
Cllrs Tolver, Burkhill and Brewerton voted for the motion
Cllr Samson, Cllr Smith and Cllr Moore voted against the motion
The Chairman used his casting vote in favour.

The meeting ended after 1hour and 26 Minutes

Chair.....

Date.....