

**MINUTES OF SHERSTON PARISH COUNCIL HELD ON THURSDAY
13th June 2019 at 7.30PM, IN SHERSTON VILLAGE HALL**

Present

Chairman: Mr J Matthews (JM)

Councillors: Mr T Moody (TM) Mr P Cutcher – Vice Chair (PC) Mr A Tremellen (AT),
Mrs T Van Rooyen (TV), Mrs M Jolliffe (MJ) Mr S Magee (SM) Mrs Lucy
Suggett (LS)

1 member of the public present who presented plans for Stone Barn and the proposed development

01.06.19	<p><u>Apologies for absence</u></p> <p>Council received apologies for absence from Mrs T Burgess (TB) , Mr M Smith (MS) & Ms N Fisher (NF)</p> <p>Resolved: To note the apologies.</p>
02.06.19	<p><u>Declarations of interest</u></p> <p>Members to declare any interest they may have in agenda items in accordance with the requirements of the Council's Code of Conduct.</p> <ul style="list-style-type: none"> • Resolved to grant dispensations for TV/MS/JM/PC/TM/NF/SM for both the Precept and Neighbourhood Development Plan. • JM declared a interest in Planning Application – 19/04649/FUL
03.06.19	<p><u>Exclusion of the Press and Public</u></p> <p>Resolved to agree any items to be dealt with after the Public (including the Press) has been excluded under Standing Order 3.D.</p> <p>N/A</p>
04.06.19	<p><u>Minutes</u></p> <p>Resolved to confirm and sign as a correct record the minutes of Sherston Parish Council Meeting held on 9th May 2019.</p>
05.06.19	<p><u>Completion of Section 1 of the Annual Return for the Year Ended 31st March 2019 – Annual Governance Statement</u></p> <p>Resolved and completed the Annual Governance Statement.</p>

06.06.19	<p><u>Completion of Section 2 of the Annual Return for the Year Ended 31st March 2019 – Accounting Statements</u></p> <p>Resolved to approve and sign the Accounting Statements.</p>
07.06.19	<p><u>Chairman's Announcements</u></p> <ul style="list-style-type: none"> • Post office closure • Minutes updated on the website • Basket swing in the Rec, repair needed, clerk to obtain a quote from Hags • Re seeding on the Rec, to obtain quotes • Phone Box request for a memorial, agreed the phone box would be refurbished and used as a book exchange, JM to draft and respond to the email request received.
08.06.19	<p><u>Clerks Report</u></p> <ul style="list-style-type: none"> • Members to receive a written report from the Clerk. <p>Resolved to obtain quotes for the tree stump at the Tartars to be ground out (LS)</p> <p>Noted – JM to speak to the Boules committee regarding the road closure for the 15th July.</p> <p>Resolved to note the report.</p>

<p>09.06.19</p>	<p><u>Planning</u></p> <p>Considered and comment on all planning applications received.</p> <ul style="list-style-type: none"> • 19/04649/FUL Extension to storage building The Clamp, The Dairy Farm, Pinkney Park, Malmesbury, Wiltshire, SN16ONX – No Objection • 19/04963/FUL Conservatory extension to rear elevation Stonewick House Sandpits Lane Sherston SN16 0NN – No Objection • 19/04094/FUL Change of use of land from agricultural to domestic use to facilitate the creation of a tennis court. Lordswood House Commonwood Lane Sherston Malmesbury Wiltshire SN16 0PX– No Objection • 19/04767/TCA Application for Work to Trees in a Cons Area Restrospective Works - 25% Crown Reduction to Sycamore Tree Village Hall, High Street, Sherston, Malmesbury, Wiltshire, SN16 0LQ– No Objection
<p>10.06.19</p>	<p><u>To hear Reports from Councillors attending Meetings of Outside Bodies to include Wiltshire Council Reports and Working Group reports</u></p> <ul style="list-style-type: none"> • Allotment Working Group – LS advised that 2 letters had been sent by the Clerk regarding two plots to improve following a recent inspection, a waiting list of 3 parishioners for allotments, costing now being looked at, Clerk awaiting confirmation form LS on costing before issuing bills for 2019. • Neighbourhood Plan – JM reported that this has now been completed. • Sports Field – MS reported that a working party had meet and a article had been supplied to the Cliffhanger. <p>Resolved: That the reports are noted.</p>

11.06.19	<p><u>Outstanding Actions</u></p> <ul style="list-style-type: none"> • Pre-School – Awaiting a response from planning, legal advice obtained by PC (Appendix A) • Twinning – Nothing further to report. • Scouts – Update from PC on funding. • Hard standing at the Rec – Nothing Further to report. • Emergency Plan – Ongoing. <p>Resolved: The reports are noted.</p>
12.06.19	<p><u>Accounts for Payment – June 2019</u></p> <p>Members reviewed the Schedule(s) of Accounts for Payment and authorised the payments for June2019.</p> <ul style="list-style-type: none"> • Staff Costs • P Cooper • Malmesbury Mowing - £135 x 5 • RBS - £225.00 • CPC - £755.86 • TG Escapes - £38,537.10 – Agreed to pay on receipt of planning permission, if planning permission refused payment of £3,303.18 to be made instead. – (SM to transfer funds from the North Legacy) • M Pope - £288, £180, £300 • N.H Beale – Stone Wall repair - £225 • Viking - £244.14 • CPC - £658.21 • Compass Graphic - £48.00
13.06.19	<p><u>Pre School</u></p> <p>Awaiting further information on the VAT and legal position over the Rec, PC to instruct solicitors to draw up a legal contract and lease.</p>
14.06.19	<p><u>Scout Lease</u></p> <p>Members considered the documentation received for the Scout Lease.</p> <p>Resolved – SM to obtain legal advice and report back, NF to speak with the Scouts for further clarification.</p>

15.06.19	<p><u>Recreational Ground</u></p> <p>Discussed any required work for the recreational ground including the wall and entrances.</p> <ul style="list-style-type: none"> • Discussed and resolved any required work for the recreational ground including the wall and entrances – LS obtaining quotes for a TOP survey and heading up the project. • Permission to use the Rec on 16th June for Olympic Day agreed. • Permission to camp on the Rec on the 12th/13th July was denied but offered the use of the football field instead, donation to be made to the Tennis Club.
16.06.19	<p><u>Speeding</u></p> <p>Members considered a email received regarding speeding issue.</p> <p>Resolved to place an article in the Cliffhanger regarding speeding in the village. (TV)</p>
17.06.19	<p><u>Parish Steward</u></p> <p>Considered any required work for the Parish Steward.</p> <ul style="list-style-type: none"> • Rubbish Clearance request now completed. • Article for the reporting of issues to Wiltshire Council on My Wiltshire to be sent to the Cliffhanger. (MS)

Meeting concluded – 21:12

Date of next meeting – Thursday 11th July 2019

Signed as a True Record:

Date:

Appendix A

The following advice has been received from a lawyer engaged by the Parish Council in view of the suggestions raised that there might be legal objections to the construction of the Pre-school.

The advice given below has been followed up by discussions and it was recommended that the best way forward would be for the parish council, acting in its role as trustee, to agree to vary any restrictions (if they exist) to permit only the building of the pre-school. This would take into account that Sport England determined that the proposed location meant that there was

no loss of viable recreational space, and would not set a precedent for any further development. The motion will be on the agenda for the July meeting.

The recreation ground was originally owned by the Stroud Brewery Company who sold it on 8 October 1934. That conveyance imposed a covenant that no part of the ground or any buildings to be erected on it may be used for the sale of alcohol. The conveyance also imposed a covenant that the recreation ground would not be disposed of without first offering it back to the Stroud Brewery Company for a price of £175.00. This latter covenant is void as it breaches the rule against perpetuities. In short, in 1934 in order to grant someone a right to purchase land at a future date that right had to take place within 21 years of the right being granted and the document had to express that the 21 year period applied. As the document does not refer to a 21 year period the re-purchase provision is entirely void.

Some years after the property was conveyed, in 1964, Hugh De Burgh Bampfylde, the surviving trustee from the 1934 conveyance, entered into a deed of trust. That trust deed recites that the £175.00 purchase price was raised from public subscriptions and the intention had been to purchase the land as a recreation ground for the village. In that deed of trust it was declared that the property would be used for the purposes of a recreation ground for the benefit of the inhabitants of the Parish of Sherston.

Immediately following that declaration of trust the Parish Council was appointed to be a replacement trustee in place of Mr Bampfylde.

Clearly since 1964 there has been some development on the land notably the Scout hut. There are therefore two points to be considered. Firstly, does the previous development of the land mean that the covenant to only use the property as a recreation ground has been nullified? In my view you cannot make such an assumption from the presence of the Scout hut. One could argue that scouting is a recreational activity and the existence of the hut allows that recreational activity to be carried out more effectively.

The second question therefore is if scouting is an activity compatible with a recreation ground, is the provision of a private nursery also compatible. This is unfortunately where I think the argument falls down. The provision of a children's nursery is without doubt to the benefit of the local community, it is not by any stretch of the imagination a recreation purpose.

In an ideal world therefore, the terms of the declaration of trust should be varied so as to permit the construction of a children's nursery on the site. The problem will be ascertaining exactly how this should be done. There are a number of possible options as follows:

For the Parish Council as trustee of the land to enter into a new declaration of trust authorising it to use part of the land as a children's nursery. If this were a normal declaration of trust then in order for such a change to be effective the beneficiaries of the trust would need to consent. In this instance the beneficiary of the trust would appear to be the inhabitants of the Parish and I doubt it would be possible to get every single one of them to agree.

To ask the Charity Commission to make a scheme. The operation of a recreation ground is a charitable purpose as confirmed by Section 5 (1) of the Charity's Act 2011. The issue however is that the recreation ground is not currently registered as a charity and I assume

there would be no appetite for a charity to be registered in respect of the recreation ground. I am therefore in some doubt as to whether the Charity Commission would, or indeed could, make a scheme in respect of an unregistered charity.

The third solution is not really a solution but a pragmatic suggestion. Although the Parish Council holds the land as trustee it could transfer the land to the Parish Council as Local Authority in which event the Parish Council would not be bound by the restriction to use the land only as a recreation ground. This action however is complicated by Charity Commission rules which would require either an independent valuation to be obtained and potentially a price paid, or alternatively for the Charity Commission to give consent to the transfer.

You will appreciate that there is no satisfactory solution to this issue and just a case of selecting the least bad option.

You forwarded to me an email from Gary Liddington of 14 April 2019. I would respond to the points he raises (*shown in italics*) as follows:

Is the Parish Council aware -

a) that its legal powers of ownership and therefore of it being able to provide a Pre School on the Rec arise not from its being a local authority but from its position as Trustee of the Sherston Recreational Trust Charity ('the Charity') ?

b) that although the Charity was unregistered with the Charity Commission some years ago due to it having no income, it and the Parish Council as Trustee are still subject to regulation by the Charity Commission?

c) of the Charity's charitable purposes as set out in its governing document (which are contained in the document which originally created it i.e. a conveyance on sale by Stroud Brewery Limited to the three original Trustees in 1934) and that those purposes do not allow for the provision of a Pre School on the Rec?

d) that the 1934 conveyance contains a restrictive covenant, registrable as a Land Charge against the title, in favour of the Vendor and its successors in title not to use the Rec for any purpose other than Recreation and which would therefore preclude a Pre School ?

d) that as Trustee of the Charity a clear conflict of interest has arisen over the proposal by the Parish Council as a local authority of a Pre School on the Rec in that the purposes of the Charity do not allow for such a provision ?

I would agree that the Parish Council is responsible for the recreation ground as trustee and not as local authority.

I do not know whether the recreation ground was ever registered with the Charity Commission, but it would appear to fulfil the criteria for a small unregistered charity.

I do not agree that the 1934 conveyance contained any restrictions on the use of the property other than what I detailed above about the sale of alcohol. However the declaration of trust of 4 September 1964 might.

I do not agree that the 1934 conveyance contains any such restrictive covenant.

A conflict of interest is a potential issue but I cannot comment on whether a conflict has arisen or not.

Has the Parish Council either in its capacity a local authority or Trustee of the Charity taken any legal advice on the matters raised in question 1 above? If so please provide a copy of the advice received. If no such legal advice has been obtained will it now be sought and will the proposed provision of the Pre School be put in abeyance until the advice is to hand?

I will leave it to you as to whether you share this correspondence with Mr Liddington or not.

Has the Parish Council acting solely in its capacity as Trustee of the Charity, as opposed to acting as a local authority, taken any decisions in respect of the provision of a Pre School on the Rec? If so please provide details of all Trustee meetings and appropriate minutes.

This is a matter for you to respond to.

When talking to members of the pre-school committee, one thing was not clear. At the point in the future when the pre-school building is effectively paid for and clear with Pumpkins able to make a profit, how much of this money would be put back into the North fund to replace the money spent? Is there governance to ensure that the money made by the venture would go towards the upkeep of the building and further investment to support the youth of the village?

As I am not familiar with the terms of the North Fund I cannot provide any meaningful comment on this point.

I understand that there has been challenges between the Diocese and Wiltshire council regarding payments for land used for the school. From the outside this does indeed seem like a can of worms, however, has this been broached with the Wiltshire Council recently and does it need re-reviewing to ensure that it can be closed? I have been given other reasons for the school refusing the building of a pre school (around square meterage per child – which WILL become an issue with the neighbourhood plan if built on the field next to the school) Again, I have reliably informed that these can be very challenging discussions, however, for a clear picture to the community a statement would be appreciated.

Whilst I do not know the background of any dispute between the Diocese and Wiltshire Council, Mr Liddington is correct to refer to ground meterage per child but this is no doubt something that was taken into account when the plans for the nursery were put together.

Within the neighbourhood plan - Policy 2 states that the recreation ground is green space where new development is ruled out. The pre-school building still seems to be in direct contravention – can this be clarified and made easily accessible for future debates?

If any of those developments is contrary to the neighbourhood plan that does not mean that the development cannot go ahead, but it would be a factor for determination by Wiltshire Council as planning authority.

I hope that the above information is useful to you. If you would like to discuss any aspects of this letter further then do please let me know.