

## **TOCKWITH WITH WILSTROP PARISH COUNCIL**

### **Minutes of a Council meeting held on Wednesday 18th June 2008 in the Village Hall**

The new Fire and Safety Regulations are in place and everybody was asked to sign the attendance book on arrival and departure. The Emergency Escape Plan is now agreed and it is placed at the Hall entrance at every meeting and attendees notice drawn to it.

**Chairman:** Councillor C Saunders

**Present:** Councillors N Waller, Mrs Scholey, Mrs Wardman, M Algar, N Alliott, C Billenness, P Pick, S Trenchard, R Ward-Campbell

**In attendance:** Mrs J Bygate (Internal Auditor), Mrs G Firth (Clerk to the Council), Mrs Steed, 3 members of the public,  
County/District Cllr Savage came late after attending an earlier meeting

The Chairman welcomed everyone to the June Council meeting.

**Apologies for absence** – were received from PC Haydon..

#### **2. Declaration of Interests**

Cllrs Saunders and Algar as TRA Committee Members and Cllrs Waller, Alliott and Trenchard as members of TRA declared a personal and prejudicial interest in matters to do with finance and the TRA and Cllr Billenness declared a personal interest in matters to do with the TRA.

#### **3. Minutes of the Annual Parish Council Meeting and last Ordinary Meeting**

The Minutes, having been circulated and taken as read, were agreed as a true record, and signed by the Chairman. The Minutes of the last Ordinary Meeting, having been circulated and taken as read were amended on Page 2 under item 7 to read “a fire in the waste bin had resulted in damage to the liner”, they were then agreed as a true record and signed by the Chairman.

#### **4. Matters arising from the Minutes**

Annual Parish Council Meeting

PC representative on the Youth Club Advisory Committee – Cllr Trenchard was elected to serve

Last Ordinary Council Meeting

Cllr Algar spoke about his perception that there was negativity at the last meeting and in the Minutes thereof. He was disappointed that the three new Cllrs had not been welcomed by name. He thanked the Chairman for guidance received thus far and said he had attended a Training event for new Cllrs. He believes the BCB application is the biggest issue in the village. He joined the TRA to fight the planning application and joined the Parish Council to “put something back into the village”.

Cllr Trenchard asked for clarification on elements of the Chairman’s speech. The Chairman said he was expressing personal feelings in his words, but he invited the Cllr to discuss the matter with him outside the Council meeting and see communications which had led the Chairman to make the remarks he had.

Resolved that Cllrs Algar, Alliott and Trenchard be formally welcomed to the Council and Cllr Savage be welcomed back to begin a new term of office.

Extension of domestic curtilage into POS – Cllrs Mrs Wardman had visited the householder concerned and had been assured that the boundary will be reinstated.

Report from YC Leader – the Clerk had prepared a statement which she read out to the meeting in an attempt to make Cllrs aware of some inaccuracies/points of clarification which needed addressing. (this statement is appended to these Minutes as appendix 1)

VH Dilapidation Survey photographs were produced on CD (146 images) and copies given to the PC and VHMC. This data would need to be remade in 7 years. Printed photographs are to be provided in a bound file but this will take some time to produce. Cllr Billenness will be reimbursed for the costs of this work.

School buses – when the Chairman followed this matter up with the School he found that it had already been addressed. Members of the public were reminded that if they brought items to the PC for action they should not take action themselves as it was a duplication of effort.

Standards Sub-Committee election – the Council supports Cllr Billenness

A168 planning application for a Waste Transfer and Recycling Station – no further comments – the Clerk to submit the response as agreed at the last Council Meeting.

Verge marker posts – the Clerk had met on site with an Officer from NYCC and taken delivery of 14 posts. Cllrs Pick and Waller agreed to erect the posts along the verge in the area of the corner of Southfield Lane and up towards the Sportsfield entrance. It was reported that there had been a recent head-on crash on Southfield Lane with two vehicles written off and two drivers taken to hospital. As this is a main route to School and a School Bus route it was stated that the County Council has a duty of care to see that the single track road with passing places has the grass verges cut. The County Cllr was asked to follow this up.

Tockwith village sign and posts – the County Cllr reported back that NYCC's policy is not to replace such signs and it is the responsibility of the PC to do this.

Inserts for parish magazines – the Clerk had forwarded some information to the Church magazines and the TRA for publication on their web site.

Allotments – (whilst collecting this year's rents), the Clerk reported a request from some tenants that an allotment association be formed. The Clerk said she would research the matter and report back to a future meeting.

## **5. Public Questions or Statements**

Standing Orders were suspended.

The following matters were raised:

Southfield Lane beyond the School has a 60mph speed limit and the grass verges should be cut.

School buses – did not use the marked bus bay when being held up before going on school trips Field entrances – one had been created further up Kirk Lane which had not required planning permission.

Cattal Station Car Park continues to be a matter of concern

T junction Kirk Lane/Main Street – there is only one persistent offender and the vehicle details were passed to the Clerk for submission in the monthly e mail to the Police

Hedge overhanging pavement at Ralph Garth – Cllr Mrs Wardman agreed to speak to the resident concerned

Allotments management/tenancies

Cllr Billenness noted with pleasure that the Chief Constable of North Yorks. and senior Officers are going back to their previous cars

Travellers – had recently stayed for a few days on Highways Agency land off Wetherby Lane. Julie Moon of HBC had dealt with the matter. The HA had been asked to put padlocks on the gates/material to block the entrance to the site to prevent re-occurrence. The County Cllr agreed to take up the matter with the Highways Agency.

Standing Orders were resumed.

The resident was advised to raise the matter of the School Bus parking directly with the School. Delegated authority was given to Cllr Mrs Wardman to see the resident of Ralph Garth.

## **6. Police matters**

An e mail from PC Haydon was read out by the Clerk.

Apologies for absence due to a Training Day

Crime figures for Tockwith are low as most incidents take place on Marston Moor Business Park. There is a total of 7 crimes committed at Tockwith, no house burglaries and one offence of a stolen motor vehicle in Ralph Garth. There is a continuing problem of theft of scrap metal including lead from roofs etc. I would request that the community remain vigilant. Offenders are openly driving around during the day looking for items to take. Any suspicious activity, please contact the Police.

I will speak with the complainant direct re the issue of obstruction of the driveway.

I have taken on board the problems with the youths in the various locations and will increase patrols to suit which will include PCSO's to give a more regular attendance. I know that the Pizza take-away has been asked not to deliver to the youths on Southfield Lane. The Council has requested to sort out the litter!!!

The speeding issue is ongoing and will be able to give you a better update next month. I will be working for the next meeting in July.

## **7. Village Hall**

Standing Orders were suspended.

Mrs Steed was invited to report - Two CD's were passed to the Clerk, a copy of the dilapidation photos and a copy of the report on the Pilot Survey. On 9th July there will be a very important meeting to discuss what happens next for the Village Hall.

Standing Orders were resumed.

**8. Marston Road Children's Play Area** Cllr Algar said he had "road-tested" the area with his three year old. He said the area looks a bit tatty and run-down, there are tree branches overhanging the child swings leading to the swings being "bombed" by birds. He said the overall impression of the area could be improved so people would be less likely to cause damage. He has asked the TRA to put an item in their next newsletter asking for volunteers to form a working

party to spruce up the Play Area. He asked for a grant from the PC to pay for materials.

Cllr Mrs Wardman , whose family has been “looking after” the Play Area since it was first established, at minimal cost to the Council, advised that the suppliers, Wicksteed, Playdale and Steelway Fensecure should be contacted to establish if special paint should be used so as not to invalidate any insurance issues. It was asked whether this was a one-off project or a commitment to future maintenance.

It was reported that B & Q give away materials which could be used and may be able to advise on the correct materials to be used.

Resolved that up to £100 be allocated to the purchase of materials to assist this project.

## **9. & 10. Report by County Cllr/District Cllr**

Cllr Savage reported.

The recent incident with travellers appearing at the Highways Agency site – the Police, HBC and NYCC had been informed. HBC are chasing up the Environment Agency.

Cattal Station Car Park – nothing new to report. Cllr Savage will be at a Rail Summit meeting in Leeds on Friday and will bring the matter up.

The matters of bus shelters, planning enforcement and an additional waste bin near the School are being followed up. Bus shelters are particularly requested on Fleet Lane and Ralph Garth.

BCB – the Wetherby News had printed an article on the toxic waste alert. The Fire Service reported that the containers came from Ellesmere Port but on independent transport not BCB's. The material was antimony slag not aluminium and was 26 x 200L drums. In storage the lids had become damaged, letting moisture and air in and resulting in toxic gases. The vehicle had been moved to a safe area. The School had not been informed. Yesterday a Government Inspector began looking at NYCC's Minerals and Waste Core Strategy Policies (on incinerators). If NYCC strategy is turned down the Policy will have to be revisited.

Cllr Savage was asked to speak to NYCC about vehicle/access signs required at the School; a 20mph limit outside the School and entrance to the Playing Fields, a matter frequently raised and which should have moved up the priority list by now; and provision of footpaths along the A59 from Wilstrop to Skip Bridge,

Cllr Savage was thanked for his report and attendance.

## **11. Correspondence**

Additional items 36 to 41 were made known.

HBC consultation meetings with PC's – Cllrs were asked to think of agenda items from this PC

Village Diary – Cllr Waller agreed to put a ring-bound file together, the Clerk to ask Costcutter for permission to site it in the shop and let village organisations know about it.

NYCC Capital Programme – Tockwith Footpaths – the Marston Road footpaths were cambered wrongly, invalid scooters were liable to tip over into the road. Cllr Savage was asked to follow this up.

Kendal Gardens – the right hand side access path is in a poor state and needs repair – Cllr Savage to speak to HBC about.

Letter from YC Leader – the three new Cllrs asked for a briefing on the history of matters concerning the YC. Cllrs remain concerned about Child Protection issues, lack of supervision and inappropriate activities.

Standing orders were suspended.

A resident spoke of his attendance at the YC in the past and believed parents should take greater responsibility for the behaviour of their children and young people. Cllrs believed NYCC has a duty to run the YC properly. Cllr Trenchard hoped input from a new Cllr would have some impetus. There used to be a proper management committee. It was believed communication was a major problem as the YC seemed to be adversarial to NYCC, the VHMC and the PC.

## **12. Planning applications**

Telephone Box, Oak Road, Cowthorpe – BT consultation on the proposed removal of public payphone kiosk. The PC wished to make comments as follows: 1. The PC does not object to the removal of the telephone service as there would seem to be no basis in planning terms for keeping it. 2. However, the PC would regret the loss of an item of local interest and asks that the telephone box (payphone kiosk) remains on site as it is an interesting village feature. The PC is prepared to maintain the kiosk in the future [This to be an agenda item for the next PC Meeting] Resolved also that a letter be sent to BT about this matter.

A168, Walshford Bridge, Walshford – Waste Transfer and Recycling Centre. The PC wishes to raise the following concerns:

1. Hours of operation and noise. The proposed facility would operate close to The Bridge Inn and residents of Walshford. Measures should be taken to ensure that the locality does not suffer adversely from the operation of such a business. This would include lorries delivering to/collecting from the site.

2. There is concern about the effect of such an operation on the adjacent River Nidd and the beck to the rear of the site. The River Nidd is prone to flooding and any leaching from the site into adjacent water courses should be prevented. Surface water drainage should also be conditioned so that there is no potential for River/beck pollution.

Standing item – BCB application and recent incident. The recent incident had been contained and although potentially harmful, the toxic gas escape had not been as bad as it might have been. Concerns were expressed however that the leaking containers were not transported by BCB's own transport and the local School and other businesses had not been informed about the incident. There was discussion about a Community Emergency Action Plan for such incidents, flooding or other issues. It was reported that the BCB application may be decided at an October meeting of NYCC.

The wall adjacent to properties to the east of East House Farm had been replaced in brick and cobble. Resolved that a letter of thanks be sent to the Housing Association and the Contractors for doing such a good job.

Planning decisions – approved with conditions: Rose Cottage, Kendal Lane – installation of connection to foul sewer

Enforcement Case – notification 22, Westfield Green – alleged extension of domestic curtilage into POS

### 13. Accounts

Bank balances (as at 18/06/08)

Lloyds TSB current a/c	£2,500.00
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Lloyds TSB Deposit a/c	£9,290.90
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A/c's to pay/ratify:

YLCA (posters)	£10.00
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Ray Farrer (grounds Maintenance)	£270.00
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Viking Direct (stationery supplies)	£205.21
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SLCC (Allotments book)	£15.20
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YLCA (Cllr's Training event)	£35.25
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#### Receipts

VAT reclaim	£648.05
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VHMC (Insurance reimbursement)	£999.46
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Allotment rents	£6.50
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HBC (grounds maintenance 2007/8)	£186.00
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Resolved that the Bank balances be accepted, and accounts be paid/ratified as above.

**Fee account from The Land and Development Practice for attendance at the Community Meeting facilitated by the Parish Council held on March 11th.** Although dispensations have been requested, none have been obtained as yet. There are only four Cllrs without interests to declare but this number constitutes a quorum. Cllr Billenness declared a personal interest in the item.

Standing Orders were suspended.

Cllr Billenness gave an address to the Meeting. (This is appended below).

It was suggested that the letter from the TRA requesting a grant to cover the costs of the consultant's attendance was a way forward.

Cllrs were puzzled at the perception that the Community Strategy Meeting was in fact a PC Meeting and that the PC would pay the consultants to attend. At the February PC Meeting the TRA had attended and requested joint working and co-operation between the PC and the TRA. The Community Strategy Meeting was a result of this request and was a Community meeting facilitated by the PC. [Advice had been received from YLCA about the organisation of such a meeting] It was stated that as it was a public meeting the attendance of the consultants was not essential.

Cllrs, whose wives are TRA Committee members, spoke of their surprise that the TRA was to be represented at the meeting and appear on the agenda.

Cllrs Saunders, Waller, Algar, Alliott and Trenchard declared a personal and prejudicial interest in this item and left the room.

Cllr Pick was elected Chairman for this item. He stated that it was apparent from the letter received from the Monitoring Officer of HBC that the PC could not pay the consultant's bill. It was also stated that, in their reply to the invitation to attend the Community Strategy Meeting, the consultants did not state that a contract existed with the PC whereby the PC would be expected to pay for them to attend the meeting.

Cllrs stated that the amount of the bill was alarming and the LDP may not have been invited had the costs been known. The PC has already made a response to the Planning Authority on planning grounds, as usual. Having read through all the information provided by the Clerk in the correspondence files, it was apparent that there had been an unfortunate misunderstanding and breakdown in communication between the PC and TRA about the meeting, its' objectives and how the PC has to work as a local Government Organisation.

The PC wants to show support for residents about what's happening in the village.

Standing Orders were resumed.

Resolved that the PC cannot pay the bill, the Clerk will write to the LDP explaining the reasons for this and a grant to cover the cost of bill of £705.00 be given to the TRA. Cllrs voted 3:1 for this resolution. Cllr Mrs Wardman voted against as she believed any further grants to the TRA would be more appreciated further down the line, not now. Cllr Billenness abstained from the voting.

**Date of next Meeting: WEDNESDAY 16th JULY 2008 in the Village Hall at 7.30pm**

Cllrs were reminded to sign out before leaving.

The Chairman thanked everyone for attending, and declared the meeting closed.

#### **ADDRESS BY COUNCILLOR CLIVE BILLENNESS ON ITEM - FEE ACCOUNT FROM THE LAND AND DEVELOPMENT PRACTICE**

There are two issues which I think we need to consider here.

The first one is whether or not the evidence suggests that a contractual relationship existed or was created between the Parish Council and the Land and Development Practice in respect of their attendance at the Community Meeting.

I think that the letter from Harrogate sets out the position very helpfully and asks all the questions I would have asked. I consider that applying the recommended tests, one must conclude that no legal contract between this Council and the Land & Development Practice.

The second issue, however, is whether or not the actions of the Council and the e-mail exchanges between the Parish Council and Tockwith Residents Association could permit a reasonable person to construe that an undertaking had been given by the Parish Council that it would accept liability for costs incurred by the TRA in bringing along its professional representatives to that meeting, to the point that the TRA incurred a financial liability by depending on that construction.

This matter is, I think, not so simple, because, as is the case in many judicial reviews of the actions of public authorities, the test to be applied here will be one of 'reasonableness' of belief.

Given that Tockwith Residents' Association have a contract with Land & Development Practice for the provision of goods and services for which they must pay, would a reasonable person say that the actions of the Parish Council had induced them to believe that if they incurred costs in instructing representatives of Land & Development Practice to attend the meeting that these costs would be re-imbursed by the Parish Council.

In trying to answer this, I think we first have to consider the relationship between the Parish Council as a corporate body and the meeting itself. I think the evidence clearly shows that the meeting was entirely under the control of the Parish Council through the Clerk and Chairman.

The Parish Council, through its Clerk, issued the invitations to a large number of people to attend the meeting. The Parish Council held authority over who could attend – this is clearly evidenced from the e-mail exchange between the TRA and the Clerk in early March 2008. About bringing along additional representatives, in the reply to which, on 3 March 2008, the Clerk e-mailed that having spoken with the Chairman, he had agreed to their request.

The agenda for the meeting was sent out on the 9th March by the Chairman, who also chaired the meeting.

Thus, I think it would be difficult for any reasonable person not to construe that the meeting was under the control of the Parish Council.

The next question is therefore whether or not a reasonable person would consider that there was acceptance of a liability for costs.

None of the invitations issued contained a costs disclaimer – hardly a great sin of omission as this is about a group of people all trying to work together for a common objective. And to 95% of those attending, the matter would not have been relevant.

In the case of the Land & Development Practice, however, it was. And on 10 March 2008, an e-mail was sent by the TRA to the Chairman asking if he appreciated that the Parish Council would create a liability for payment of specified hourly fees to the Land & Development Practice representatives if they attended the meeting.

The matter also appears to have arisen at a TRA meeting held on 10 March – the same day – a meeting which Councillor Savage and I also attended as invited guests and which was chaired by the Chairman - in which the statement is recorded in paragraph 2 “Parish council to pay LDP meeting fees”. I was not present for the entire meeting and have no recollection of this statement, but it is minuted and the minutes signed as a true record by the Chairman. Such a minute cannot create any form of contractual relationship between TRA, the Parish Council and Land & Development Practice.

For the Chairman of the Parish Council to give such an undertaking at such a meeting would be ‘ultra vires’ and could, in one extreme, potentially render him personally liable for these costs. This is not an issue here though.

What is an issue is, however, that the TRA were clearly under the impression on the 10th March that these costs would be met by the Parish Council.

The TRA bundle does not contain a response to the warning e-mail from TRA on 10th March that a liability for costs would be created. Equally the Parish Council bundle does not contain any e-mail formally disclaiming liability for this item.

So – we are left with a position that the TRA did alert the Parish Council to the fact that there would be a need to pay the Land & Development Practice’s meeting fees if they attended the meeting which the Parish Council was organising. The TRA clearly continued to work under the impression that the bill would be paid and at no time was this belief dispelled.

From all this, I think that it would have been very easy for a reasonable person to construe that the TRA had a valid expectation that the costs for Parish council to pay Land & Development Practice meeting fees attending would be re-imbursed.

Fortunately, none of this seems to me to be a major problem for this Council.

Everyone is committed to the same objective and is working together to combat a planning application which is seen as an enormous threat to this entire community.



I don't think anyone will disagree that on the night of the Community Meeting, the Land & Development Practice representatives contribution was both helpful and informative and formed one of the cornerstones of the evening.

Some organisational grouping will need to pay L&DP for attending.

If the Parish Council were to pay it directly, then I foresee many problems relating to the issue of VAT, terms and conditions of contract etc etc. If the TRA were to pay it, I think that they would look to the Parish Council, with some considerable justification for the reasons I have already given, to re-imburse them. Were we not to do so in some way, I think it would not only reflect badly on this Parish Council amongst those people who elected us to represent them but would also be likely to lead to criticism from the Local Government Ombudsman were a member of the TRA to report us to that body, and probably also an award of compensation.

Were a resident or a Parish Councillor to object to our 2008 accounts to the Audit Commission on the basis that the Council had not reimbursed the TRA, the full costs of the investigation of the case, win or lose, would fall on this Parish Council and could be substantial, as auditors' hourly rates are considerably higher than those of surveyors.

Fortunately, of course, this Council had already made a provision in its 2008 budget for payment of further sums towards the TRA campaign about BCB. This therefore seems to me a perfectly reasonable time to make a grant to the TRA to cover the cost of this invoice, without any admission of contractual liability, and so bring this matter to a close so that we can move on to what really matters, defeating the BCB application.