



HERTINGFORDBURY PARISH COUNCIL

Minutes of the meeting of Hertingfordbury Parish Council held on **Wednesday 10th July 2014** at 7.30 pm in Hertingfordbury Cowper JMI School, Birch Green

PRESENT: Cllrs C Edwards (Chairman), G O'Leary, P Rochford, T Brennan, H Blake, B Simkins, B Jones, , R Morris, S Edgell

In attendance: (From 8:00pm) Mr P Petchey, three electors and the clerk, Tom Brindley

36. APOLOGIES FOR ABSENCE

Cllr E Bradbury.

37. CHAIRMAN'S ANNOUNCEMENTS

Members were reminded that declarations of interest should be made immediately prior to an item being debated.

Due to the delayed arrival of Mr Petchey, and the clerk, the chairman proposed and it was agreed to reorder the agenda.

38. MINUTES OF MEETING 11TH JUNE 2014

The minutes were agreed as a true record the chairman was authorised to sign.

39. MATTERS ARISING

- 39.1. (33.2.a) Footway between Cole Green and Birch Green. Ongoing discussions between HCC and EHDC as to where responsibility lies.
- 39.2. (33.2.b) Footpath 10. Cllr O'Leary confirmed he had cleared the path.
- 39.3. (33.2.c) Low bridge warning signs. Herts Highways had been supplied with location diagrams.
- 39.4. (34.1) Use of school Hall. The request for a permanent key, and access to the projector and internet were due to be discussed at a school governors' Resources Committee meeting on 14th July.

40. WORK PROGRAMME

- 40.1. The date for work on Birch Green Pond was amended to November 2014.
- 40.2. The Greens Risk Assessments would be carried out and reported to the next meeting (Sept 10th 2014). The clerk was asked to send out blank assessment forms and Cllr Rochford agreed to send out last year's assessments.

41. PLANNING

- 41.1. Two new applications had been received (9 Foxdells, 35 Birch Green). Members RESOLVED not to raise objections.
- 41.2. One application, 35 Birch Green, for a CLEUD had been refused

42. REPORTS

42.1. Crossing and Greens:

- a) See also Minute.

42.2. Highways, Footpaths and Byways:

- a) Trees were restricting visibility at the junction of Foxdells and Birch Green.
- b) The footway between Staines Green and Birch Green was overgrown.



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- 42.3. **Play Area:** Nothing to report
- 42.4. **Water Hall:** Nothing to report
- 42.5. **Walter Wallinger Charity:** Nothing to report
- 42.6. **Panshanger Quarry and Country Park:** Nothing to report
- 42.7. **Car Parking at Birch Green:** A member reported that consideration was being given to a new access to the school off the Old Coach Road.

Mr Petchey and the clerk arrived at 8.00 p.m.

43. PUBLIC PARTICIPATION

- 43.1. Dawn Clark addressed the council and asked for more explanation on crossings and easements. Mrs Clark also commented that the school needed a larger car park.
- 43.2. A resident asked if para. 23 of Mr Petchey's advice was a potential way of granting new crossings.
- 43.3. The chairman advised that the items would be covered later in the meeting.
- 43.4. Mr A Baxter informed the council that the school had been unable to put up a notice as the notice board was broken. The chairman advised that this was a school responsibility as the parish council had a separate notice board, which was functioning.

44. PRESENTATION BY MR P PETCHEY, LEGAL COUNSEL, ON GREENS CROSSINGS

- 44.1. Mr Philip Petchey, a barrister specialising in Village Greens, addressed the council. He explained that this was a complex area of law and interacts with complicated facts of history. Issues regarding crossings on village greens were common. Many de facto crossings were of dubious origin but as they happened a long time ago it was in practice very difficult to do anything about them.
- 44.2. Courts were generally sympathetic to those with long standing access. He explained that there was a significant difference between tolerance of a long standing crossing and the grant of a new crossing.
- 44.3. He suggested that even where a parish council takes a view that nothing can be done about existing crossings, this would not affect its consideration of new crossings.
- 44.4. The council had originally asked, "Can the PC grant new easements. Mr Petchey advised that in his considered opinion the answer was no. In reaching this opinion he had considered two key aspects: The right to traverse the green and the right to make up a crossing for example by applying gravel or tarmac. Each element was covered by a separate law.
- 44.5. The making up of a crossing was contrary to 19th century legislation.
- 44.6. The basic right to cross grass did not imply the need to create a surface. A grant could be made to cross the green but no grant to make up the surface was permitted. This included the use of Grasscrete or reinforcing matting.
- 44.7. The issue of licenses or easements, was prevented because the parish council held the greens under the Open Spaces Act 1906 which is specific in its wording: "...must be held as open space and for no other purpose". The phrase, "for no other purpose" prevents the grant of a right of way.
- 44.8. In answer to the question asked earlier regarding paragraph 23 of his written advice, Mr Petchey had concluded that under the terms of the LGA 1972, this potential work around failed.
- 44.9. More broadly, and this is a frequent issue – is the conflict between competing interests. Legislation currently gives the balance to protection and recreation not to crossings.



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- 44.10.If the land was not owned by the Parish Council, this restriction would not apply.
- 44.11.The Parish Council had only taken ownership of the greens in 1955. This meant that any crossing in existence before 1955 would be covered by different legislation.
- 44.12.He further iterated that interpretation of the law had varied over time and that the Parish Council may have had the power to grant rights of way in the past. In practical terms, the Parish Council could not revoke existing rights.
- 44.13.The Parish Council had now asked that four specific questions be answered.
- 44.14.Parking: Does 20 years use give rise to a right to park on the green?
- a) Mr Petchey explained that the law regarding the right to park is different and further complicates the matter. It is possible to grant an easement to park but this is legally unclear. A recent case had considered the right to park between the hours of 0600 and 1800. The court concluded that such extensive use didn't give the landowner sufficient time for his own enjoyment of his land and so refused to grant an easement. But a Scottish court disagreed.
 - b) However, regarding a village green the law is simpler. Parking on a green clearly interferes with the bright of the public for sports and past times. The high court has decreed that parking interferes with the right to enjoy the land for recreational use. The conclusion is that there is no right to park on the green. However, where it is happening on a de facto basis it is difficult to do anything about it. In many cases it fulfils a function such as keeping the roads clear, and would not be sensible to do anything about it.
 - c) The Parish Council is not under any duty to prevent such parking. If the public complained and the PC decided that it was not expedient to do anything about it, the PC decision would be unlikely to be susceptible to judicial review.
 - d) This would not prevent the parish council taking action if new cases arose, nor would it be unlawful for the parish council to permit parking by not taking action.
 - e) Cllr Morris asked about a fine regime established by the then Ministry of Agriculture and Fisheries. Mr Petchey advised that this was likely to be under a by-law and would not be applicable here.
 - f) Cllr O'Leary asked what the challenge mechanism would be. Mr Petchey advised that all Parish Council decisions were potentially subject to judicial review. The court might take a pragmatic view but could choose to follow a strictly legal line.
 - g) Grant of new rights.
 - h) This was much clearer as had been explained; the Parish Council could not grant new rights.
 - i) If a householder drove over the green two or three times a day and didn't damage the green it might be acceptable to ignore. But if it damaged the green the Parish Council might choose to take action.
 - j) Cllr Rochford asked about the possibility of a land swap, whereby village green was delisted and an equivalent amount of land swapped. Mr Petchey was of the opinion that this would be difficult. If land was required by a local authority it could use the compulsory purchase act. For a major development this might be a way round but would be unlikely to be effective for a few houses.
 - k) Cllr Brennan asked if the 1906 Open Spaces act applied to a thin strip of green that was more akin to a verge. Mr Petchey affirmed that yes the law applied however narrow the green was.
 - l) Cllr Blake asked about lay byes and how had they come into being. Mr Petchey suggested that highways probably just did it and no-one challenged.
 - m) Cllr O'Leary asked about the history of judicial reviews regarding g parish council decisions and Mr Petchey advised that there was very little.
- 44.15.Q2: Does 20 years continuous use of a crossing give rise to an established right?
- a) As the law prevents the establishment of a new crossing then no right can be established through continuous use. However use before 1955 probably would be established.
- 44.16.Q3: What remedy does the council have?



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a) The council would need to take action for trespass in the county court.

44.17.Q4: Does the council have a duty to take action?

- a) No there is no duty but the council does act as trustee and should consider its responsibility as such.
- b) If the council did not take action this decision could be the subject of a challenge by judicial review. The costs would be initially borne by the challenger (and could be several thousand pounds) but costs might be awarded if the decision was deemed negligent.

44.18. Mr Petchey was asked about use of an existing crossing for a new development. He thought that if this crossing was established (and especially if it was pre 1955) and was to access a small development within the curtilage of an existing property, a n extension of the use would be acceptable., But it would be unlikely to be acceptable if it were used as access to a large development or to additional oland.to be for a similar sized.

44.19.The council thanked Mr Petchey for his attendance.

45. FINANCE

45.1. The financial report to 30th June 2014 was presented. Cllr Brennan asked for an explanation of the difference between the VAT recovered and the figure reported as owing in the end of year accounts.. The clerk explained that when the VAT claim was made all vouchers were examined and only those where the supplier's VAT number was quoted could be reclaimed. This made a difference of around £78 in the amount of VAT (£2039) that could be reclaimed.

45.2. Three payments were approved. See attached list.

46. CORRESPONDENCE

46.1. The clerk had received a letter from the Birch Green school governors advising that the council was to use the new hall from July. This would require collecting and returning a key for each meeting. Cllr O'Leary agreed to approach the school to see if a key could be made permanently available to avoid the requirement for the clerk to make a special visit, as the key was only available for collection during school hours. The clerk has also requested that the council be allowed to hire the internet and projection facilities.

46.2. The list of correspondence received was noted.

47. MATTERS TO NOTE OR FOR FURTHER DISCUSSION

47.1. The clerk was asked to write to East Herts District Council for an update on its position on reinstatement of land adjacent to the Old Coach Road to agricultural standard.

47.2. .The clerk was asked to pursue pruning the hedge at the same plot which was blocking the footway.

47.3. It was reported that the Birch Green village entrance sign was deteriorating, Cllr Rochford agreed to repair.

47.4. Cllr Morris asked about the possibility of placing a convex mirror opposite his driveway to facilitate safer reversing.

47.5. It was reported that the lettering on the war memorial was in need of repair.

47.6. It was reported that rubble had been tipped on the highway near 1 Staines Green.

The meeting closed at 10.05 p.m.

Signed: _____

Date: _____



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Payments Approved

	<u>Payee</u>	<u>Description</u>	<u>CQ</u>	<u>Net</u>	<u>VAT</u>	<u>Gross</u>
11/07/2014	T Brindley	Expenses	400078	47.07	0.71	47.78
11/07/2014	Coopers	Grass	400079	519.00	103.80	622.80
11/07/2014	P Petchey	Legal	400080	500.00	100.00	600.00

Totals	1,066.07	204.51	1,270.58
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