

Whitley Parish Council

1. The meeting was opened at 7.00 pm by the Chair Cllr Walton.

2. Open Public Forum(OPF) 23rd Nov 2021

2.1. There were 22 members of the public in attendance. All members confirmed the reason for their presence at the Council meeting was to learn more about the impending legal action being considered by the Parish Councillors in connection with the Gale Common Judicial Review.

Cllr Humphrey provided a summary of the history of the campaign against the Gale Common Extraction proposal leading to the present circumstances and the opportunity open to the Parish Council to prosecute their action for Judicial Review. Cllr Humphrey explained that during the progress of the application at no stage did the Parish object to the concept of the extraction of the ash. The concerns and objections were with the way it was going to be extracted and particularly for Whitley the mode of transportation of the ash. He reminded everyone of a public meeting at Whitley Primary school with Peel Environmental the applicant where the operation plans were discussed, and strong opinions shared. Notwithstanding, the application went to North Yorkshire planning and was passed. The Parish Council made representations to the planning committee during this virtual meeting together with other interest parties. These objections were overruled, and all requests and proposals sought by the application were approved. This included the transport of the ash by HGV along Whitefield Lane onto the A19 passing the school to the M62. There was no interest by the applicant in considering any other mode of shipment that would mitigate the effect on Whitley.

Cllr Humphrey stressed Parish Councils complaint is not with the company or applicant it is with the process of the decision adopted by the North Yorkshire County Council planning committee. This represents the core of the position of the Parish Council. But the Council recognise there are other opinions about the matter and one of the objectives of the meeting was to seek the views of residents of the village to take into consideration as the Parish Council make a balanced decision on how and if the matter will be progressed to the next stages.

Cllr Humphrey stressed that the Council took legal advice to understand whether the planning application was correctly decided and were advised that both the process and the decision was legally flawed and the only route available to challenge the planning decision is through Judicial Review. To that end the council have engaged barristers and lawyers to action the matter that will be at significant cost. There had been expenditure to date that has been drawn from Parish reserve funds. Contribution to the fighting funds have been received from Cridling Stubbs, Womersley and a private resident of Heck who all object to the conduct of North Yorkshire County Council not only in this application but more widely the system of how "Minerals and Waste "planning applications are assessed and granted approval. It is worth noting that the final decision was split 5:5 with the Chair using a casting vote to grant approval. The Chair also applied a casting vote to reject a proposal to postpone a final decision so that the environmental concerns and sustainability options could be reviewed. It is equally noteworthy that North Yorkshire Council planning committees had passed 100% of all planning applications presented for approval.

A successful outcome of the Judicial Review would prove the decision was flawed although it is not possible to speculate upon what further action will follow from a favourable determination from the High Court.

To date all the legal arguments and documents have been prepared and lodged with the Courts for a potential Hearing mid-December. The legal principles on which our case is based are well established and in the public domain for scrutiny. The matter is being contested by both North Yorkshire and the applicant in their capacity as an interested party.

Cllr White opened the matter for public discussion, questions and comments outlining details of the costs to date that amounted to £10,000 all drawn from Parish reserves. He explained that the advice from our barrister was that there are strong grounds to have the planning decision overturned. It was made clear however, that success could not be guaranteed and if the determination of the matter was not in our favour the Parish could be liable to further costs, subject to clarification, of £25,000 plus a contribution to the legal costs of North Yorkshire Council of £10,000. In such circumstances, the Parish would lose a significant amount of its reserves that historically has been used to maintain the Park and Playgrounds. Once these reserves are exhausted to maintain services to the community the Parish precept which is part of the Council Tax charged to residents in the village may be increased to cover all expenditure. Currently the precept ranges between £20 to £50 per household which may go up if the Parish exhaust all reserves and loose the case.

Cllr White explained that the meeting had been called to understand the strength of feeling of residents so that the Parish Council could gauge whether they should progress to the final stage.

A resident requested details of the strong grounds in our favour. The Clerk responded with the observation that seven grounds have been lodged supporting the case for determination against the grant of approval. In particular, the planning officers report to the planning committee did not deal correctly with matters appertaining to and special restrictions on development within the Green Belt. The planning committee were not presented with the correct evidence concerning the sustainability and the best environmental practices that should have been considered. The development plan for Selby District and the National Planning Framework for the UK requires that in evaluating any mineral extraction proposal connected with Green Belt land the best practical alternative environmentally friendly options must be assessed. However, the planning officer advised the planning committee members that this requirement MUST be ignored thereby dismissing any consideration of different options; this was a fundamental flaw in the process.

Cllr Humphrey observed that it is encouraging that our QC has suggested that the planning officer had “seriously misled the committee”, he also points out that the climate crisis is now at the top of the world agenda and thereby our case has been much strengthened by a focus on the issue of the measures to mitigate climate change and the need for planning to take note of and address such concerns.

A resident expressed the opinion that the Parish should pursue the action to fight the claim until all reserves are exhausted. He observed that as a non-profit organisation the Council could apply the funds received in the past from property developers in fighting the case and therefore there should be no requirement to increase precept to cover the legal fees given the reserves are enough.

A resident question the makeup of the North Yorkshire County Council planning committee and who voted for and against. Cllr Humphrey explained that committee members are drawn from councillors throughout the whole of North Yorkshire many of whom have no knowledge of the geography and nature of the Whitley village and the surrounding area. It was noted that it is part of the planning officer’s duty, within their report, to bring to the attention of and give advice to the committee about all matters and issues pertinent to the application. It is the contention of the Whitley Parish that the officer provided poor advice and misinformed the committee members who made decisions based on information given to them by NYCC planning officers.

A resident reminded the meeting that planning decisions are made with reference to and under instructions of the North Yorkshire local plan quoting an extract from the document “the policies will assist in the retention of both local and environmental quality in natural resources. There is an inherent conflict between mineral working and global sustainability. Although the plan seeks to minimise this conflict by encouraging non road haulage where appropriate”

A resident questioned whether if we are successful in having the planning approval invalidated that it can be called in by the Government and overruled. The Clerk advised that the only occasion that a government can call in a plan is before it is approved. In this case if invalidated the applicant can legitimately submit a second application for fresh consideration by the planning committee. The planning officer would need to ensure that all the flaws and failures giving rise to the invalidation of the original application are rectified and the plan would be assessed on its merits against the requirements of planning policy as it now stands. The resident went on to point out that given the resurgence of the interest in climate change following COP26 it is important to recognise the significant positive contribution that the reclamation of Pulverised Fuel Ash and its reuse in the building industry will have on the environment. It is important that the issue in question is not the process of extraction but the method of extraction. The manufacture of cement worldwide contributes 8% to carbon emissions which will be mitigated by the reclamation and use of PFA.

Cllr Humphrey in agreeing with this fact pointed out that it was for this reason the principle of extraction was not contested, the focus being on the manner of transportation of the reclaimed product was the issue. The legal advice that the Council have been given suggest a strong case in challenging the approval process. It was also important to recognise the wider cause for concern that many applications are being approved for economic reasons at the expense of environmental protection.

Cllr White suggested that notwithstanding the stipulated legal process and protocols there are instances in which the Secretary of State has intervened in planning processes to overrule previous decisions, e.g. coal mining in Cumbria, Fracking and developments in the Isle of Dogs. The key ambition in pursuing the case was to reverse the Gale Common application in its current form and replaced with a more environmentally friendly solution.

It was confirmed following a question from a resident seeking clarification that in the event of the case being lost that the Parish Councils contribution to the legal fees of the other side would be capped at £10,000. The resident also observed that the impact of the transport operations affects the North part of the village much more than the South and questioned whether all residents are equally committed to the action. A positive response was received from those residents in the meeting whose homes are in the southern end who all voiced their approval of the legal action.

A resident from the south of the village commented that whilst in principle supporting the idea of extraction of the aggregate the way it will be removed by road over a 25-year period is totally unacceptable from an environmental perspective and quality of life for people in the village. Many residents have children in the school who will be affected and all road users seeking to exit onto the motorway will be impacted with traffic jams and accidents. The resident was encouraged by the chance of success especially so close to the commitments emerging from COP26 and suggested now was an appropriate time to follow through with the judicial review. In conclusion the resident articulated their support for the action as accepting the North Yorkshire decision would result in significant damage to the environment and quality of life; it would be a life sentence. There has never been a more important potential call upon the reserves to preserve the quality of life in the village; reserves that are not earmarked for other specific purposes.

A resident offered their support to the Council in fighting the decision suggesting that the action was an appropriate use of reserves. Reserves in any event that could be recouped from Government in the future. It would be better to use it for the village. It is important to remember that the community are facing 25 years of lorries, pollution, and potential accidents. The community in their opinion needed to support the Council in this fight.

Cllr Humphrey advised that the Parish Council had spent considerable time deliberating the morality and principle of spending the amount of public money to such a campaign. He shared extracts of comments received from residents with their reservations of committing so much money to the legal action. Attempts have been made to raise donations to support the campaign from public contributions to funds sourced from neighbouring Parish Councils. It was acknowledged the expenditure is significant and it is the responsibility of the Council to ensure the funds are sourced appropriately and spend on legitimate and for sanctioned purposes. Part of the reason the Parish Council sent out invitation calling this meeting was to hear all the views of all residents.

A member of the public in response questioned the legitimacy of conclusions being drawn from this meeting as it cannot be suggested it is necessarily representative of the people in the community. Cllr White advised that in the past fortnight prior to the meeting all households in the village had received a hand delivered leaflet giving notice of the meeting and its agenda. The invitation provided full details of the topic concerning Gale Common and the Judicial Review including information of expenditure to date and the further amount to be incurred in pursuit of the legal action to its conclusion. The leaflet encouraged a response by either email, facebook, letter or attendance at the meeting. It made clear that the absence of any response would be interpreted as approval for the Parish Council to make such decision as it considered appropriate regarding the matter.

This member of the public volunteering that although a resident of Eggborough were motivated to attend the meeting as they had been made redundant by the applicant. In the absence of any lorry movements from the site pending completion of the legal action extraction has been suspended and several employees had been made redundant. The meeting speculated on the number of wagon movements from Gale Common with the conclusion that at present subject to availability of lorries there are 5 HGV movements to transport the currently permitted 30,000 tonnes per annum.

Questions were raised concerning the plans for road management if the Gale Common project was to go ahead. It was made clear that 266 HGV movements would be permitted per day travelling along the length of Whitefield Lane onto the A19 to the M62. Up until the extraction of 400,000 tonnes of ash per annum lorries would pass along Whitefield Lane whose length would be widened on the section heading into the village. Tree planning would be actioned to provide some noise mitigation. The extraction of 400,000 tonnes per annum would trigger the provision of a new road parallel to Whitefield Lane to accommodate increased lorry movements. It was noted that there would be no other road management schemes implemented nor any traffic calming measures. Such requirements are added as conditions in the granting of the approval. Residents expressed concerns about the ability of North Yorkshire planning department to ensure that these conditions are met.

Cllr Humphrey responded that the Parish Council in proposing the legal action are seeking to hold North Yorkshire County Council to account. There is no dispute with the principle of extraction or the business strategy of the applicant. The objection is with environmental impact of the method of extraction and the process by which the North Yorkshire County Council made the decision to grant approval. The Parish Council engaged a planning consultant to present detailed and reasoned objections to the application which together with all other objections we set aside by the planning committee in favour of acceptance of the recommendations of the planning officer.

A resident expressed the view that progressing the action was right and brave and commented win or lose it is important to try.

Questions were raised by some residents about the comparison of the number of HGV's using the A19 at present with the increased number if the project is implemented and its impact on traffic conditions. Cllr White pointed out the Highways Department following inspection of surveys concluded that although doubling the traffic movements the increased flow of the additional HGV's would be within the capacity of the A19. The Highways Department went on to observe that the HGV's would have an important adverse effect for residents on Whitefield Lane, but this was considered by the department not to be significant, and the solution would be to widen the road.

A resident questioned the level of commitment of the other Councils and was advised that Womersley and Heck have contributed a fixed sum with Cridling Stubbs donating a proportion based the comparative number of residents. Details of the contributions are published in Parish Council minutes. The consensus of the local Parish Councils is that individually we are small organisations and that the only way to campaign against planning applications and decisions that are unfavourable to our communities is to work together as a coalition.

A resident questioned whether there was scope for negotiation with the applicants to offer the withdrawal of Parish objections if the applicant was prepared to consider other alternative methods of transporting the ash other than HGV. Councillors concluded that given the aggressive responses received to date from the applicant's legal team it is highly unlikely that any form of conciliatory conclusion would be entertained.

A resident suggested that given the funds available to the applicant even if the judicial review is determined in favour of the Parish, it is possible a new application would be presented any defaults in the plans rectified leading to a valid approval on a second occasion. Any attempt to halt the project would therefore prove to be futile.

A member of the public brought the meeting back to the issue of the number of persons present at the council meeting and whether the views expressed are representative of the sentiments of the whole of Whitley community.

Cllr Humphrey reiterated the details previously shared that the Parish Council had throughout the duration of the challenge to Gale Common from the first presentation of the development proposal through to objections to the planning application and representations to the planning committee leading to the contemplation of moving forward with the judicial review that the Parish have sought to communicate and engage with the local community at all stages. A leaflet had been delivered to every household advising of the meeting, communications to the parents of children at Eggborough School were made through the schools electronic jotter, coupled with the use of social media to promote the campaign all methods seeking feedback pro or against the action. Although the numbers in physical attendance were limited to 22 individuals' expressions of support have been evidenced via email and 24 individual donations made to the Just Giving Page for the campaign. A resident responded with the observation that just because there is a limited numbers in attendance this does not mean that the group are not representative of the community.

A resident questioned whether any consideration had been given to the production of the blocks on site and whether alternative transport routes had been considered. They suggested the HGV could be directed via the junction at Cridling Stubbs to the industrial development at the old Kellingley Colliery avoiding Knottingley, and Eggborough, with access to the railheads and the canal. Cllr Humphrey explained that all these options had been pointed out all suggestions of which had been disregarded by the planning committee.

A resident postulated the notion of carrying out a survey of the community in parallel with the upcoming elections for the Police Commissioners. Cllr Humphrey responded that given the timescales of the High Court system the judicial review is pending and thus the Parish Council need to decide to commit to the action.

Cllr Humphrey closed the discussion and requested a public vote on the proposal that

“The Parish Council commit to continuing the action to Judicial Review on the understanding that the determination may fall in favour of North Yorkshire and the applicant and thereby exposing the Parish Council to legal costs that will be borne out of Parish Council reserves”.

A show of hands revealed a substantial majority in favour of proceeding with the action.

2.2. The Chair closed the public forum and proceeded to conduct of the Parish meeting.

**Minutes of the Whitley Parish Council Meeting held on 23rd
Nov 2021 at Whitley & Eggborough Primary School Annex
Building Ref – 07/22**

3. **Present:** Cllr Walton, Cllr White, Cllr Blackburn, Cllr Cole, Cllr Humphrey Cllr Woodhead, and Clerk to the Council J Hunter.

4. **Apologies for absence:**

4.1. All Councillors were present at the meeting.

5. **Disclosure of interest:**

5.1. It was noted that Cllr Humphrey, Cllr T Woodhead, and Cllr S Cole are members of the Gale Common Action Group. A community group campaigning against the Gale Common Ash Extraction planning application. Cllr Blackburn and Cllr Cole advised that they were resident on Whitefield Lane and as such would be directly impacted by the proposed HGV movements from the Gale Common site.

5.2. There were no other interests registered.

6. **Minutes of the Whitley Parish Council Meeting held on 19th Oct 2021:**

6.1. The minutes of the Parish Meeting held on 19th Oct 2021 were agreed as a true record and approved for signature.

Action: Clerk to deliver a copy of the amended minutes of the Council meeting held on 19th Oct 2021 for signature by the Chair.

7. **Opening matters for information and action as required:**

7.1. **Gale Common Extraction Proposal:** The Clerk presented a summary of the costs facing the Council if the legal action was progressed to Judicial Review. In total the net expenditure would be £42,000 after deduction of contributions from Womersley and Cridling Stubbs parish councils and donations from private individuals. In addition, if determination falls in favour of the defendants North Yorkshire County Council, a further £10,000 payment on account of the other parties' legal costs.

Councillors commented upon the range of views expressed during the public forum and were encouraged by the clear outcome of the debate that demonstrated support and mandate for the Parish Council to proceed with the judicial review to its conclusion.

Proposed: Cllr White that the Parish Council approve continuation of the legal action to judicial review. **Seconded:** Cllr Humphrey. **Carried:** Unanimously.

Action: Clerk to progress collection of the contributions from Womersley, Cridling Stubbs and Heck. Cllr Humphrey and the Clerk liaise with Irwin Mitchell and barristers in expediting the legal action.

7.2. **Whitley Underpass:** Cllr Humphrey reported on the progress of the project. North Yorkshire and Selby District (NY&SD) Cllr McCartney has arranged for the provision of the £1,900 grant towards the refurbishment of the underpass.

Action: Clerk to submit the grant application form signed by Cllr Walton and Cllr White to Selby District Council to initiate the transfer of the funds into the bank account of the Parish Council.

Cllr Humphrey advised that the decorating contractors have been engaged to complete the work before the New Year. Payment will be affected as soon as the redecorating is complete.

The management of vegetation and the lighting will be progressed with reference to the Highways Department.

7.3. **Financial Report:** Cllr White suggested that in the interests of financial clarity although not required by statute the Council publish details of all the individual payment transactions incurred by the Parish. The Councillors agreed that sharing such details would be acceptable and add value to the information made available to the public.

8. **Correspondence received:** The Clerk summarised the details of correspondence received by email or post.

8.1. Emails and postage.

8.1.1 An email from a resident from All Saints Close requesting some speed stickers.

Action: Cllr White to deliver a supply of stickers.

8.2. Social Media

8.2.1 Cllr Humphrey advised that the majority of social media communications were directed at the Gale Common campaign.

9. **Planning matters:** The Clerk provided a summary of the planning applications made in the month for review and consideration by the Council.

9.1. 2021/1355/HPA – 23 Blackthorn Close, a two-storey extension to the side of the existing property. Noted with no comments.

9.2. There were no planning applications granted for approval.

10. Council Finance & Administration:

10.1. RFO Report as at 23/11/2021:

Bank/Account	Income since 1 st April 2021	Expenditure since 1 st April 2021	Of which is devolved fund expenditure	Current Balance	Notes/Comment
Santander Deposit	3.25		Nil	55,211.27	Interest paid monthly
Santander Current Account (Cash Book)	19,229.87	10,442.50	3,170	10,147.53	No interest
Total Bank Balances				65,358.80	
Less following funds:					
Allocated Funds		Gale Common Judicial Review		20,000.00	
Allocated Funds		Crossing		5,000.00	
Total Allocated funds				25,000.00	
Parish Council Bank Funds		Legal Action and Complaints against the Council. Future Development and Facility Provision –Buildings. Future Development and Facility Provision – ROS. Future Development and Facility Provision -Nature Reserve. Unexpected/unforeseeable expenditure.		40,358.80	
VAT due for reclaim				1,112.13	
Total Unallocated Parish Funds				41,470.93	

The Clerk presented his report on the financial position of the Parish Council referring to detailed income and expenditure statements providing details of receipts and payments for the period from 1st April 2021 to 23rd November 2021. The aggregate expenditure to date is £30,851 which incorporates the provision for the cost of the pedestrian crossing of £5,000 and the provision for the Gale Common legal costs of £20,000. This generates a net deficit of payments over receipts of £15,445.

Total funds available to the council amount to £7,551 from cumulative precept monies and £33,659 from devolved funds.

Cllr White sought clarity concerning the projected parish council reserves following settlement of all legal costs. Based on anticipated levels of expenditure to be incurred and, if the judicial review is lost and the parish becomes liable for the maximum contribution to the defendants' legal costs, total reserves would fall to approximately £15,000. Given the council are committed to expenditure of £8,000 to improve the drainage in Daffodil Park and painting of £1,200 it is anticipated total funds carried forward into the next financial year would be at

the magnitude of £5,000. As indicated previously by the Clerk in assessing the financial requirement total expenditure is £15,000 and it thereby follows that such is the amount of precept that would be needed by the Parish to meet ongoing routine services.

10.2. Accounts Payable: The following payments were approved for settlement by bank transfer.

Cheque No.	Payable to:	Amount: £
22487	J R Hunter – Clerk Salary	494.30
22483	Cancellation – J R Hunter, Clerk Salary	(494.30)
22488	J White – flowers for war memorial	8.00
22489	S Cole – Wreath for Remembrance Day	25.00
22490	K Walton – Over 80’s Christmas gifts 16 x 25	400.00
22491	Vision ICT – website hosting	247.80
22492	Atkinsons – Security Shed for Allotments	1,318.25

10.3. Accounts Payable retrospectively: The following retrospective payments made by bank transfer since the last council meeting were approved.

Cheque No.	Payable to:	Amount: £

11. Recreational Open Space in Whitley:

11.1. Parks and Verges:

11.1.1 Parks & Playground Maintenance: Councillors considered various items in connection with maintenance within the park and playgrounds. Cllr White reported on several matters:

- The sub-contractor engaged to cut back the hedges due to workload has regrettably been unable to complete the pruning of the border hedge at Daffodil Park.

Action: The work will be expedited for completion as soon as possible.

- The contractor approached to complete the fence replacement has not responded to confirm dates for the repair. Consequently, another contractor has been engaged who has undertaken to install the fence during December at the same price as the original contractor. The Clerk confirmed that the insurers have approved the repair at the quote agreed of £370.00 details of which will be submitted for refund of expenditure.
- The mole contractor has trapped 11 moles. Cllr White communicated with George Fillingham who agreed the state of the parks and verges was much improved following the work of the mole catcher.

11.1.2 Management of Trees in Daffodil Park: Cllr White reported on two large trees on the tree line at the rear of Blackthorn Close and Lee View. These well-established trees some 40 to 50 years old would require significant height work to trim branches. Cllr White has agreed to meet with Ben Jenkins a local tree surgeon for advice on the most appropriate approach for the management of these trees and obtain indication of relative costs.

11.1.3 **Verge cutting:** Given the eradication Cllr White advised that he has agreed to meet with George to review the schedule, extent and quality of grass cutting to be conducted in the new season from spring to autumn in 2022. Some complaints had been received from residents about the state of the hedges at the perimeter of the Calor enclosure in Daffodil Park, details of which have been reported to customer service of Calor with a request for the cut back of excess growth.

12. A19 Safety:

- 12.1. **Vehicle Activated Signs Reports:** The traffic data from the police speed check camera van has been published on Facebook.
- 12.2. **Pedestrian Crossing:** There is no further update on the installation of the crossing other than information from the Highways Department has advised that a job sheet had been raised for the work that would be due for commencement with the next 30 days.
- 12.3. **Community Speed Watch:** Cllr White reported on progress towards the establishment of a community speed watch group. He suggested some promotional medial could be posted inviting anonymous comments to the Whitley Community post box pages about the establishment of such a group.

13. A.O.B.

- Cllr Walton requested that the Parish Council write to Tunstall Healthcare and Ringtons Tea thanking them for their contributions to the Christmas food parcels for the over 80's.
- Cllr White commented on matters concerning All Saints Church. Following the proposed closure of the church the fabric of the building is the responsibility of the Diocese of Leeds. Complaints have been received about the state of upkeep of the grounds with overgrown vegetation. Councillors agreed that it is important to make clear the Parish Council can assume no responsibility for the cutting and maintenance of the grounds which is the responsibility of the Parochial Church Council.
- Cllr White advised that the resident who had volunteered to maintain the two entry signs to the village has returned the jet washer advising that the resident was no longer willing to continue cleaning the welcome signs. Councillors speculated that this work could be undertaken by the team from Tunstalls.
- Cllr White shared comments received from the proprietors of the George and Dragon public house expressing their complaints concerning their expectation of the Parish Council's involvement in the Christmas Tree lighting. They articulated their grievance that the burden of managing any tree lighting event has fallen directly upon their shoulders. Councillors acknowledged there had been a break down in communications arising from the consequential restrictions imposed by the pandemic. It is important that we recognise that the Council do not plan to hold a tree lighting ceremony in 2022.

14. Confirm the date, time and place of next meeting:

14.1. **Next Parish Council Meeting:** Tuesday 18th Jan 2022 at 7pm at Whitley & Eggborough Primary School.

15. Closure of meeting: 9:25 pm.