

Whitley Parish Council

Extraordinary Meeting

1. The meeting was opened at 7.00 pm by the Chairman Cllr Humphrey.
2. **Open Public Forum(OPF) 17th December 2020**
 - 2.1. There were no members of the public present.
 - 2.2. The Chair closed the public forum.

Minutes of the Whitley Parish Council Virtual Online

Extraordinary Meeting held on 17th December 2020 - 07/20

3. **Present:** Cllr Humphrey, Cllr Walton, Cllr Cole, Cllr Blackburn (via telephone) Cllr White, Cllr Broadbent, Cllr Woodhead and Clerk to the Council J Hunter.
4. **Apologies for absence:**
 - 4.1. All Councillors were present via video link with Cllr Blackburn connecting via the phone.
5. **Disclosures of interest:**
 - 5.1. It was noted that Cllr T Woodhead, Cllr S Cole and Cllr D Broadbent are members of the Gale Common Action Group. A community group campaigning against the Gale Common Ash Extraction planning application.
 - 5.2. There were no other interests registered.
6. **Opening matters for information and action as required:**
 - 6.1. **Gale Common Extraction Proposal:** Cllr Woodhead updated the Council on the status of the follow up action to the planning committee's decision to approve the application. He summarised the details of various emails that have been circulated by the Chair of Cridling Stubbs Parish Council following the video conference meeting held on 25th November 2020 which was convened to consider actions that can be taken to appeal the decision. The first stage in progressing an appeal would be to secure legal representatives who would review the case and establish whether there were sufficient grounds for an application for judicial review. To that end Irwin Mitchell have been identified as suitably qualified solicitors in this field who would be approached on behalf of the local councils working together as group in a collective action against North Yorkshire County Council. Cllr Woodhead advised that he had provided his personal details to act as the liaison on behalf of Whitley Parish Council in securing an estimate from Irwin Mitchell for the initial review of the case. Cllr Woodhead pointed out that, based on his own estimates the likely cost of taking the appeal through its full process would be of a magnitude of £40,000 with a further £10,000 of additional cost if the appeal is lost. These costs would be shared between three councils.

The initial review stage estimated to be £3,000 needs to be progressed promptly to demonstrate to the courts a credible degree of grievance. The other issue to resolve between the councils is the basis of sharing of the costs of the action with a preliminary proposal that it be allocated in proportion of number of households within each parish.

The Councillors reiterated their commitment to supporting the first stage of the process to obtain the appropriate legal advice in determining the credible options to progress an appeal of the decision. However, it was equally agreed that it was important that such costs should only be incurred if any subsequent legal action can be taken within the stipulated 6-week time frame and that there will be no delay that would bar any judicial review. Cllr Woodhead explained that the appeal time window has not yet begun as the planning decision notice has not been lodged pending finalisation of the s106 agreement.

Cllr Woodhead explained that subject to a favourable conclusion of the first stage that there were sufficient grounds for judicial review then matters would need to be progressed quickly. The next stage would be to lodge a formal request with the courts at a cost of £7,000 who would review the representations and either reject or grant approval for formal hearing. Rejection would give rise to an opportunity to request an aural review of the case. Approval for judicial review would give rise to substantial costs in preparation and delivery of the case at sums approaching £20,000 over a lengthy period of 12 months. It is also worth noting that during the progress of these legal proceedings the North Yorkshire County planning office may choose to "pull" their approval and reschedule the planning application for consideration at a new planning committee hearing. This gives the committee the opportunity to ensure that any procedural failures in the original planning hearing are rectified.

Cllr Humphrey sought insight into the commitment of the other Councils Cridling Stubs and Womersley in the pursuit of the action and expressed the view that it was important that Whitley Parish focus on the initial phase of the legal process to establish clear merits of the case. He also recommended that in engaging with our legal advisors it was critical to be proactive, address specific questions and set clear objectives of the outcomes that we as clients are seeking to achieve against which an informed decision can be reached. Cllr Humphrey in acknowledging that Whitley residents are more significantly impacted by the consequences of the decision they will be more advantaged by a successful appeal and as such ought to be prepared to contribute an appropriate proportion of the cost of the action.

Cllr White expressed his understanding of the nature of a judicial review that it is a factual testing of the compliance of the planning process with legal requirements. The key question is, notwithstanding the actual decision, what are the actions that have been taken by the planning committee that are unlawful. The first stage of the process will establish if there are any issues that can be challenged with a judicial review and in so doing the Council have met their obligation to residents to test the extent to which decisions affecting the interests of the community are legitimate.

Cllr White also supported the views expressed by Cllr Humphrey concerning the proportion of costs that the Council could be called upon to contribute even to the extent of assuming 100% of the first phase. He also suggested that approaches could be made to Eggborough Parish to understand their position regarding the planning approval and whether they would be interested in contributing to the action fund. He also questioned whether advice could be sought from the Yorkshire Local Council Association and the status of the Gale Common Action Group and their continuation of involvement and financial contribution to the action. Cllr Woodhead advised that the community group have no funds to contribute.

Action: Clerk to seek advice from Yorkshire Local Council Association in connection with the appeal against the decision and legal action that can be taken.

Action: Cllr White to approach Chair of Eggborough Council to establish their position concerning the planning decision.

Cllr White suggested that having established the legal options assuming the matters could be progressed to the next stages that fundraising would be required to finance the substantial costs.

Cllr Humphrey suggested that notwithstanding the total potential costs it was important to clarify the Parish position concerning the first stage in the preliminary review of the case to

determine whether an appeal for judicial review can be lodged. This would be at an approximate cost of £3,000 plus VAT. The Councillors indicated a unanimous agreement to the support such a proposal.

Action: A proposal to approve contribution to the first stage review to be considered at the next full Council meeting on 12th January 2021.

Cllr Woodhead agreed to act on behalf of Whitley Parish in liaison with the other Councils in their communication with the legal team to obtain the full quotation and consult with solicitors to produce a clear specification for their first stage review. Cllr Walton suggested the Cllr Humphrey as Chair to Whitley Parish Council take an active role with the liaison group of Councils in conjunction with Cllr Woodhead and Cllr Broadbent.

Cllr White suggested that following receipt of the quotation for the first stage of the legal action and clarification of the contributions to be made by each Parish Council a suitable form of communication to residents should be prepared and delivered to residents in the community to explain the Councils intentions. Such notice would include details of the first stage costs and the potential on going actions, legal implications, levels of expenditure and funding options.

In concluding the meeting Cllr Humphrey agreed to contact and update the planning consultant who the Parish had engaged to prepare its original objection to the planning application. It was noted that this consultant also is an expert advisor to the Campaign for the Protection of Rural England and may have further advice to offer in the management of the case.

7. Closure of meeting: 7:42 pm