

Datchet Parish Council

**MINUTES OF THE EXTRAORDINARY MEETING OF THE PARISH COUNCIL
HELD IN THE VILLAGE HALL, ALLEN WAY, DATCHET
ON WEDNESDAY 13TH MARCH 2019 AT 19.30**

There was heavy congestion in the village and councillors present agreed to delay the start of the meeting for 10 minutes. The meeting commenced at 19.40.

Present: Cllrs Mr H Clasper (In The Chair), Mrs P Barnes-Taylor, Mr A Clemens, Mr P Darban, Mrs M Davis, Mrs L O'Flynn, Mr T O'Flynn, Mrs R Millns, Mr G Muir, Mr I Thompson, Mr A Verma.

Guest speaker: Mr Robert Craig, Solicitor

Apologies: Cllr Mr E Larcombe.

There were 8 members of the public present.

18.201 ANNOUNCEMENTS - Cllr Clasper welcomed everyone to the meeting. He explained that it was necessary to appoint someone to take the minutes as no-one from the Parish Office was able to attend. The Clerk, Mrs Katy Jones, had advised that anyone can volunteer to take the minutes. A member of the public, Ms Alison Crampin, had volunteered. Cllr Clasper said Ms Crampin was known to councillors as a regular attendee of Parish Council meetings, a member of the Datchet Neighbourhood Plan Steering Group and a member of the Datchet Village Society Committee, and was an expert in taking minutes. Cllr Clasper proposed to ask Ms Crampin to take the minutes. Agreed.

18.202 PUBLIC QUESTION TIME - There were no public questions.

18.203 DECLARATIONS OF INTEREST - Cllr Clasper said the Clerk had advised that, as the subject matter was the same as the previous week, the declarations of interest applied equally to this meeting.

18.204 TO RECEIVE A REPORT FROM MR ROBERT CRAIG ON THE RECOMMENDATIONS ON THE FUTURE MANAGEMENT OF DATCHET VILLAGE HALL AND TO VOTE TO EITHER ACCEPT THE RECOMMENDATIONS, AND PROCEED, OR NOT

Cllr Clasper introduced Mr Craig, the solicitor instructed by Datchet Parish Council to advise and produce documents on the future management of the Village Hall in Allen Way.

His verbal presentation was in two parts:

- i. a summary of the history; Mr Craig had been involved in this matter for at least six years.
- ii. a presentation of recommendations contained in documents previously circulated to councillors.

Cllr Clasper asked if councillors had these documents with them and distributed copies to those who had not. Cllr Clasper proposed that Mr Craig be allowed to speak first, followed by questions and discussion.

18.205 PART 1: SUMMARY OF THE HISTORY

Mr Craig explained that the history and charitable status of the Village Hall is contained in three key documents. This is the only certain information. The rest is shrouded in mystery: there are copies of signed documents, one unsigned, lots of correspondence and confusion.

The three documents are:

1967 DOCUMENT

In 1967, Mr Randolph donated £6250 to start a charity. He entered into a document with Mr Owen and Mr Wilson, who were a solicitor and company director, to acquire land and erect a building if the trustees thought fit. Mr Randolph deposited £6250 with the trustees. A month later they acquired land from Mrs Sabatini.

A Charity has 'objects', or objectives, which define what a charity can do. It should not stray from those objects. The 1967 document has a number of provisions appropriate to a charity. It has 7 clauses, is about three or four pages long and is straightforward and simple. This document has little to do with charity except the trustees were to hold the land in accordance with the charity deeds.

1973 DOCUMENT

Mr Owen and Mr Wilson wanted to retire. The document, drawn up in 1973 and signed in 1976, refers to the appointment of a new trustee. Mr Owen and Mr Wilson retired in favour of Datchet Parish Council. The council was appointed trustee of the charity. The Trust owns the land. Datchet Parish Council is the trustee.

1976 DOCUMENT

At a 1976 meeting of the 'caretaker Village Hall Management Committee', they congratulated themselves on their achievements in building a hall, and their administrative management, and annexed a document of rules for running the hall through a management committee. The Charity Commission has pointed out that these 1976 rules do not have any legal validity. There is no signed copy, it is not dated, it does not refer to Mr Randolph's charity but it resembles closely the form of document which has been drafted [by Mr Craig], for example it says that the committee should have four members and 27 representative members from various local organisations. Whether this document had any legal validity or not, the Village Hall was administered by a committee. Whether the right people were on the committee is not clear.

In 2012/2013, the effective committee was a successor committee to the one in 1976 except it was never established in a legal document. The Charities Commission did not help by registering and then deregistering another charity. The Commission can only advise trustees on the management committee whether to register as a new charity or overhaul the trustee provisions on 1967 so people can be properly appointed.

Paul Clayden of ACRE (Action with Communities in Rural England) said that the management committee could not be the trustee. The trustee could only be Datchet Parish Council. In a paper ACRE produced, it explained that village halls usually have two sets of trustees: charity or managing trustees; and holding or custodian trustees.

The managing trustees are the committee. The holding trustee holds the land or property on behalf of the charity. The holding trustee should not be involved in the day-to-day running. It is also recommended that a holding trustee should not also be a management trustee. There appears to be a situation here where the management committee runs the hall but has never been formalised as the group of trustees. ACRE said that the management committee must be a sub-committee of Datchet Parish Council.

The 2011 Charities Act, page 177, states: Charity trustee means the person having control or management of the administration of the charity. The registration at the Charities Commission shows the management committee as trustees of the charity. The register is run in such a way that the person(s) who files the accounts lists the trustees. If this list is incorrect, it should be changed by those people.

Regarding the group running the village hall: the trustees appointed in the 1970s were not running the hall in an administrative sense, doing the day-to-day running.

This is anomalous to the way the Charities Commission would normally look at running a charity of this kind.

The management committee ought to find common ground to move forward, with Datchet Parish Council formulated as the holding trustee and the management committee as the charity trustees. For example, if someone falls off the roof, who would be sued? As the land is, probably, vested in Datchet Parish Council, the management committee would be entitled to say that they do the washing-up, etc, and Datchet Parish Council is the real trustee. But, Datchet Parish Council's status as owner of the land is not certain. When the trustees (Owen and Wilson) retired, they appear not to have transferred the land. The land is vested in the executors and heirs of Messrs Owen and Wilson. As part of this process, the land title should be cleared up at the Land Registry and vested in a Holding Trustee. When this is sorted out the charity should become a Charitable Incorporated Organisation.

18.206 QUESTIONS ON PART I

Cllr Mrs Davies asked if Mr Craig knew there were multiple buildings on the land and listed the Parish Office, Changing Rooms, and the Day Centre which she said had a 50-year lease with 9 years remaining on that lease. Where do those buildings stand, she asked?

Cllr Mrs Barnes-Taylor added that the Health Centre was included but was told it was not.

Mr Craig did know about the buildings and said that they all belong to the charity.

Whatever is on the land belongs to the charity, even if Datchet Parish Council contributed to it. This is confirmed by the Charities Commission. If it is partly leased out, the freehold still belongs to the charity. The activities or purposes do not change the status.

Mr Craig also noted that the Parish Council offices are on this land which, he said, was a conflict: if Datchet Parish Council is the managing trustee, it might be asked why it has granted itself permission to have its offices there.

Cllr Mrs Barnes-Taylor said that Messrs Owen and Wilson were Parish Councillors who had resigned because it was too big a job for two people. They originated the management committee which used to report to Datchet Parish Council quarterly. Datchet Parish Council's office was originally a library and a centre for older people. When the charity which provided lunch at the centre ceased operation, the council took it over as offices.

Mr Craig said that it did not really matter. It did not affect the fundamentals of the charity. It would be better if some other group granted a licence to the council to use the offices.

Cllr Mrs Barnes-Taylor asked if that could be done retrospectively.

Mr Craig said that no-one was objecting to Datchet Parish Council having the offices.

Cllr Mrs Barnes-Taylor asked if the names of the representatives on the original management committee were known. They were not. She asked if Mr Craig agreed with Paul Clayden (ACRE) that Datchet Parish Council is the sole trustee.

Mr Craig said he did but added that Datchet Parish Council does not have title to the land. Messrs Owen and Wilson did not transfer the land when they retired.

Cllr Mrs Barnes-Taylor made an observation that when the representative from ACRE came, she had the wrong information and her recommendations did not stand up because of that. Cllr Mrs Barnes Taylor queried Mr Craig's independence. In court, there are usually two solicitors, one for each party, she said. She asked who had paid Mr Craig during the past six years.

Mr Craig said that the management committee and Datchet Parish Council had paid him to produce the documents he was presenting at the meeting. Before that, he was advising the management committee. He said this ought not to be a partisan row. All these historical points bore out what he was saying about the mystery and lack of clarity which can be tidied up for the future.

Cllr Verma asked if Mr Craig had considered adverse possession as the title is not registered.

Mr Craig said it would be impossible for Datchet Parish Council to do that. A charity trustee cannot acquire possessory title against its own charity. It cannot say I have been running this so it is my land. The Land Registry might allow possessory title based on long occupation.

Cllr O'Flynn asked what happened in 2013.

Mr Craig said he was asked to find out if the management committee were the charity trustees. The 1976 document was never signed although the management committee was, *de facto*, running the hall: it has an odd legal status.

Cllr Mr O’Flynn said that at that time Datchet Parish Council had two people on the management committee to look after the interests of Datchet Parish Council. He said Datchet Parish Council was the active trustee until 2014.

Mr Craig asked if the council wanted to run the hall on a day-to-day basis. He said the council might not have title to the land but that is not insurmountable. It would mean appointing councillors to run the committee, for them to accept legal responsibility, and dispose with the services of the management committee, so Datchet Parish Council runs it.

He said the only duly-constituted trustee is the council. The rules were 40 years out of date and needed updating. New rules might include the committee being constituted of x number of councillors and x members of the public.

Cllr Mrs Millns asked if Mr Craig had said that the council should be a holding trustee or a management trustee but not both as was being proposed here.

Mr Craig confirmed that, in this case, Datchet Parish Council would be the holding trustee and management trustee. He said that it was a recommendation from ACRE for them to be separate but not a legal requirement. It was a practical observation, from looking at 8000 village halls. Most run with the council as holding trustee and a management committee. This means that the land does not have to be transferred when the holding trustees change.

Cllr Thompson said that £20,000 had been spent in legal fees. He said he was looking for a practical solution for running the hall.

Mr Craig said it was sensible to have a management committee which does the work and a holding trustee, Datchet Parish Council, which contributes to the cost of running the hall, with a new set of rules, as recommended by the Charities Commission, keeping the original objects of the charity.

Cllr Thompson said he was looking for simplicity. He said there was a consensus among some councillors to take on the running of the hall, with a working group to assist without significant change.

Mr Craig queried ‘significant change’. The management committee has been running the hall for some years, he said. The 1976 document that was not adopted, proposed 27 people on the committee and one Datchet Parish Council representative.

Cllr O’Flynn said that while the council had only one member on the committee, several other councillors were on the committee in other capacities.

Cllr Mrs O’Flynn said that the 27 on the committee were from organisations which used the hall.

Cllr Clasper said that the 1976 document contains a list of active organisations entitled to have a representative on the committee.

18.207 PART 2: PRESENTATION OF RECOMMENDATIONS

Mr Craig referred to Section 280 of the Charities Act. Charity trustees can resolve to change the administration, rules and procedures but not the objects of a charity. There are other ways to change the objects. The newly-constituted trustees can bring in new rules, as proposed in 1979.

Mr Craig said he had drafted the documents presented to modify the powers of procedure in the 1967 deed. It was a conventional set of charitable rules making it clear that the objects had not changed. He read out key details from the documents and commented on them.

Possessory title or absolute title could be registered. If no-one had bothered to transfer the land, he was reasonably optimistic that there was a good chance of getting absolute title.

The custodian trustee in the document is Datchet Parish Council. Mr Craig explained the role of an Official Custodian. There is someone at the Charities Commission who is an Official Custodian for charities.

He acts in a nominal sense as the holding trustee so that it is not necessary to keep changing the identity of the trustee. It is a legal fiction that he holds land. Mr Craig suggested that this property should be owned by an official custodian. He had not seen the original title documents. The custodian trustee must do as requested by the management committee which runs the village hall and the Sabatini land, but there is nothing to prevent a councillor from being a member of the management committee.

At section 5 of the document, Powers of the Management Committee, Mr Craig explained that members of the management committee should have no personal interest but they can enjoy the same benefits and have the same status to use the premises as the public.

At section 16, Disposal of Trust Property, Mr Craig added that the property could be sold but that the proceeds would have to be applied on similar objects. Mr Craig added that he had visited many parish halls and thought Datchet's Village Hall was one of the nicest he had seen. He felt that there was no real risk of the councillors wanting to dispose of it.

At section 19, the Objects of the Charity, Mr Craig said these were set out from the 1967 deed. He said that no-one who looks at charity deeds would find anything unacceptable here. It was intended to be a bland set of rules.

The licence fee was £7000.

18.208 QUESTIONS ON PART II

Cllr Mrs Barnes-Taylor asked for the names of the people in Section 5 (Management Committee and terms of office section).

Cllr Mr Clasper said they were Mr Adrian Needham and Mrs Sandra Needham, for a term of one year; and himself and Mr Ian Bacon for a term of three years. He added that other people will be appointed to increase numbers and for succession.

Cllr Thompson asked if this was taking away the council's powers and responsibility for funds and monies, referred to in a document dated 21 March 1967.

Mr Craig said yes. That was the responsibility of the charity trustees. It would fall to the management committee. He explained that it was a legal responsibility. The money is provided by the Parish Council to the management committee. The Parish Council is not in control of the money. He said there was a series of things from 1967 that Datchet Parish Council does not do. He asked Cllr Thompson if there was a bank account.

Cllr Thompson said he did not know. He said the Parish Council had not received statements of accounts, only those given to the Charities Commission. He said he had asked to look at the books on several occasions and a letter signed by six councillors had asked for clarification. He said the council had not had an AGM with the management committee where the accounts could be scrutinised. Cllr Thompson wanted to continue with the present trust documents and use the powers as Datchet Parish Council under Section 5.

Mr Craig said if Datchet Parish Council wants to do that, it can, as trustees. He asked if that was the best way forward for Datchet. Are village halls best run by a council which has many other responsibilities?

The Parish Council has the right to question the accounts. Mr Craig recommended that Cllr Thompson start by asking the management committee, then the Charities Commission which invariably provides answers. He said the council can scrutinise the annual accounts just like the shareholder of a company. Shareholders do not see bank statements.

Cllr Thompson said there was a duty to scrutinise any accounts. He said JP Collins Solicitors' letter confirms the council should have these.

Mr Craig replied that if you are a charity trustee, you will be in control of the accounts and monies. If the council thinks it is not being run properly or funds misappropriated, it can change that. If you have serious problems, you can take back control, set new rules and run it yourselves.

Cllr Darban quoted from a letter written by the previous Parish Clerk, Mr Graham Leaver, dated 1 March 1994. This said there was a need for two members of Datchet Parish Council to be appointed custodian trustees. It listed Mr G Symonds as a managing trustee. In 1994, the two custodian trustees were the chair and vice-chair of Datchet Parish Council.

Cllr Clasper explained that there were two letters and read both out in full.

The first letter, dated 23 February 1994, was from Mr John Street, secretary of the Hall Management Committee. He was investigating additional insurance to protect the trustees against liabilities, and needed the principal or custodian trustee's name. In 1967, two members had been named and Mr Street said it was now necessary to name two present members of Datchet Parish Council. It was not necessary for them to attend meetings and they should preferably not be members of the management committee.

The second letter, dated 1 March 1994, which Cllr Darban had quoted from, was the response from Mr Leaver. This listed the appointed custodian trustees as the chair and vice-chair of Datchet Parish Council. At the time, this was Cllr E Larcombe and Cllr Mrs E Hawkes.

Mr Craig said that this was part of the confusion. You would not want two custodian trustees. The Parish Council was the trustee in 1976. There is no indication that anything changed subsequently. The people named had moved on. He repeated that the Parish Council, as a body, should not be a trustee on the management committee but councillors can be members of the management committee.

Cllr Thompson said that the accounts should be put in order and nothing else changed at the moment. An AGM was required and questions about the accounts answered before a new phase was started.

Cllr Clasper said Cllr Thompson's comments about the accounts were inaccurate. The accounts are prepared by the management committee's treasurer. They are subject to independent examination by an accountant. When the accounts have been examined and signed, they are submitted with the annual return to the Charities Commission and put on their website. Regarding the outstanding questions which Cllr Thompson said had not been answered, Cllr Clasper produced a sheet of figures drawn up by Cllr Thompson showing his (Cllr Thompson's) breakdown of the accounts from 2010-2018 annotated with questions. Cllr Clasper had responded and attached answers to the questions prepared by Mr Adrian Needham. This response, in an email dated 12 March 2019, gave an answer to every query. He said it was not true that the questions had not been answered.

Cllr O'Flynn asked Mr Craig if he thought there had been a breakdown in communications.

Mr Craig said people have different objectives. Some think that DPC should have control, others think that it is better to be done by the management committee.

Cllr O'Flynn said that the management committee does not allow anyone to have information about what they are doing. Why will they produce accounts for the Charities Commission but not give them to Datchet Parish Council?

Mr Craig said that the best protection for the public is an independent examination. The accounts are available for scrutiny on the Charities Commission website.

Cllr Clasper added that the Charities Commission website offers five years of accounts. These formal accounts are a summary of the financial acts of any body.

Cllr Thompson said the accounts were online but the council had not seen them for the last five years or discussed them with the management committee at an AGM. Cllr Thompson said he had received a call that day from Mr Graham Leaver, the previous clerk, who said he had tried to get accounts to scrutinise in the past but had been unable to do so.

Cllr Clasper said Cllr Thompson had every right to ask questions. Mr Thompson's sheet had a number of questions on the 2010-2018 annual accounts which were answered by Mr Needham and attached to an email dated 12 March 2019.

Cllr Thompson said he had not seen the attachment. It was suggested that perhaps Cllr Thompson had not downloaded the attachment from the email.

Mr Craig drew attention to the fact that Datchet Parish Council had known since 2013 that it was the trustee and had not done anything about it. The committee could have been fired and control asserted by the council but nothing had happened. That is a dereliction of duty. The Charities Commission would not be pleased with the Parish Council if this was brought to their attention. The point is what to do now.

Cllr Davies said the Charities Commission website is very sophisticated and its online warning system flagged up an unusually high governance cost (£2880) in the accounts for 2013-14. She wanted to question that. She said there was a lack of openness and transparency from the chair and vice-chair and a mediation process was needed. Cllr Mrs Davies had spoken to the Charities Commission on four occasions and was advised to get rid of the management committee and get on with it. She would like a trustees meeting to discuss it.

Cllr Muir recommended that people should be allowed to inspect the accounts and move forward.

Cllr Darban said that, when it was mentioned earlier that that the council could bring the management of the trust back in house, it was met with approving comments around the room. Yet the chair of Datchet Parish Council (Cllr Mrs J Stickland) had just resigned because of the work load and because other councillors were doing so little. If anyone is suggesting that we take this back in house, he said, they're in cloud cuckoo land.

Cllr Mrs Barnes-Taylor said it was important to get the finances sorted and wanted a similar presentation format (pink and green sheets) as at Parish Council meetings.

Cllr Clasper said there was no connection between his role as lead member for Finance and his role on the hall management committee. He proposed the council moved to the vote.

Cllr Thompson said a proposal had gone to the Charities Commission under Cllr Larcombe. It had not been written. A meeting of the trust was needed.

Cllr Mrs Davies said the vote should be held at a properly-convened meeting as councillors were being made to vote under duress.

Cllr Clasper said the meeting had been properly convened, with due notice given and due notice of the proposal. The agenda was properly constituted.

Cllr Thompson and Cllr Mrs Davies said that a legal officer was not present.

Cllr Clasper explained he had been told by the Clerk, Mrs Jones, that she has no legal expertise.

Cllr Muir said he thought there needed to be more work to look into everything. There would be a new parish council starting soon with new members.

Cllr Clasper read out Agenda Item 4 and proposed that the meeting accepts the recommendations. It was seconded by Cllr Darban. A named vote was requested by Mrs Barnes-Taylor.

FOR:	3	Cllr Darban, Cllr Mrs Millns, Cllr Clasper,
AGAINST:	5	Cllr Mrs Davies, Cllr Mrs Barnes-Taylor, Cllr Thompson, Cllr O'Flynn, Cllr Mrs O'Flynn,
ABSTAINING:	3	Cllr Verma, Cllr Clemens, Cllr Muir.
FAILED.		The motion failed and the meeting was closed.

The meeting closed at 22.00.

THE NEXT FULL COUNCIL MEETING WILL BE HELD 8TH APRIL 2019

CHAIRMAN

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