

BRITWELL PARISH COUNCIL

MINUTES OF THE EXTRAORDINARY MEETING OF BRITWELL PARISH COUNCIL HELD ON WEDNESDAY 4th MARCH 2019 AT 7.00 P.M. IN THE PARISH COMMUNITY CENTRE

Present Cllr J. Finn (in the chair)
Cllrs. R Anderson , M. Carter, Mrs J Finn , P.Murphy, O.Isernia and S.Wright.

In Attendance : Mr. J. Holder (Locum Clerk) ;
Mr Sushil Thobhani, the Service Lead Governance, Slough BC

19/35/PC To Elect a Chairman and for the Chairman to sign a Declaration of Office

35.1 Cllrs J Finn and O Isernia both standing for the post, the members **voted** 4:3 in favour of Cllr J Finn , Cllr Finn to sign a Declaration of Office following the meeting .

35.2 Further to Cllr Finn's election, the vice chairmanship was now vacant and would need to be considered at a later meeting.

19/36/PC Public Discussion

36.1 Mr Sushil Thobhani, the Service Lead at Slough BC responsible for the Abolition of the Council, was given the opportunity to speak but declined.

19/37/PC Declaration of Interest

Cllrs. Anderson and Carter each made a declaration that he was a member of Slough BC in respect of agenda item 4.

19/38/PC Apologies

There were none.

19/39 /PC Community Governance Review 2018: Abolition Order

39.1 The Locum Clerk said that since the last Council meeting, Counsel had advised on the matter and further to this drafted a letter before action. This letter had been approved by both the Council's solicitor and Mr Holder and had been circulated last week to members for approval, which for time constraints had then been issued on 28 February. Council **ratified** the issue of the letter before action to Slough BC. Mr Thobhani confirmed Slough BC had received the letter

39.2 Mr Holder said that for judicial review applications, it was necessary to set out in a letter before action the grounds of the application and the relief which is sought. The letter set out that the decision by Slough BC to abolish the Council was unlawful for three reasons – an irrational conclusion as to support for abolition; a failure to have regard to the Council's role as a representative body, and an irrational conclusion that abolition was justified. The Letter invited Slough BC to take certain action – namely to revoke the Abolition Order; to allow the current Council members to continue in office after expiry of their term until new elections are held and to provide a precept for the coming year. Slough BC were given 7 days to agree to provide the actions as requested, failing which the Council would commence proceedings for judicial review. Mr Holder said that the grounds of application and the relief sought followed on from the advice which Counsel had given.

39.3 Cllr Anderson said that Slough BC could not provide such relief. He said that the Borough budget had been set and there was no precept. In respect of extension in office, Mr Holder

understood from Counsel that that could be achieved. As to the precept, the Council had submitted its precept request in the usual way. Insofar as Slough BC had decided either not to raise a precept or to cover this in reserves, this was a risk they had taken. It remained for the judge to determine. Cllr Anderson said that if there were no precept, how could the Council fund the legal costs of an action. Further, if the Council were to lose the action, it would also have to meet the legal costs of Slough BC. Mr Holder noted that insofar as the Council were not to receive on an interim basis funding from Slough BC, it would need to fund the action from its reserves. It would keep watch on costs. Insofar as it were then to lose at the main court hearing, then all assets and liabilities would in any event be acquired by Slough BC upon abolition of the Council.

39.4 Mr Holder noted that there were time constraints in which to bring an action for judicial review. On the basis that Slough BC were not to abandon their Abolition Order, as requested in the Letter before action, then the next step would be for the Council to commence legal action against Slough BC for judicial review to revoke the Abolition Order and for ancillary relief such as extension of terms of office and precept/funding. Following discussion, the Council **resolved** that the Council should commence legal action in such circumstances, as outlined by the Locum Clerk by 4 in favour (Cllrs J Finn, Isernia, Murphy and Wright), with 3 abstentions (Cllrs. Anderson, Carter and Mrs J Finn).

39.5 Following discussion, the Council **resolved** that the Council should fund the legal action by *virring* money from its General Reserves, by 4 in favour (Cllrs J Finn, Isernia, Murphy and Wright), with 3 abstentions (Cllrs. Anderson, Carter and Mrs J Finn).

39.6 Cllr Carter expressed concern that he, and other councillors, might be held personally liable, as a councillor, for legal costs incurred. The Locum Clerk said that that was not his understanding but he would seek legal advice on this. **Action: Locum Clerk**

39.7 Mr Holder said that as currently authorised by the Council, he was the only person who might see legal advice. The concern related to conflict of interest and legal privilege in respect of two of the councillors who were also Slough BC councillors. A way to address this was for the Council to set up a committee or working group, which could then receive such legal advice. The Locum Clerk had drafted terms of reference for a Working Group, which he read out, with a suggested 4 members/3 members for quorum which could receive legal advice. However such working group would not have decision making powers which would remain with the Full Council.

39.8 Cllrs Anderson and Carter queried how effectively they could discharge their decision making role if not privy to such legal advice unlike other members would be, making reference to the Code of Conduct. Mr Holder said that the Code of Conduct dealt with more usual types of activity which might affect a councillor, such as a development by a friend whereas this was a unique situation concerning an Abolition Order sought by the one Council on the other council, in which they were members of both; that there were issues of legal privilege and that legal advice may contain "warts and all" ; that even if they would seek to fully maintain two separate hats, in practice it would be hard for knowledge gained in one context not to affect them when wearing the other hat. Speaking generally, Mr Holder said that there would be certain conflict occasions where a councillor would declare an interest and not vote but other situations were they would exit the room. He enquired whether, in respect of this issue, they would exit the room -in a Part 2 situation - if the Locum Clerk were about to read out legal advice. Cllr Anderson said he would not leave. Cllr Isernia expressed concern that the Labour Party wished to close down the Council notwithstanding the popular vote in support. Cllr Anderson noted that over the years there were occasions such as the Bar fraud matter, where political advantage might have been taken by Cllr Carter and himself but in their role as Council members, they had not done so. Mr Holder noted that as currently authorised by the Council, he was the only person who might see legal advice and that in such capacity, he would act

objectively in advising in turn the Council as a whole. Cllr Carter confirmed that he regarded Mr Holder as ethical and he did not question his integrity, although he might take a different view if it were not Mr Holder in place. Mr Holder said he would take further legal advice.
Action: Locum Clerk

19/40/PC Chicken Ranch Bar

40.1 The Locum Clerk noted that he had now instructed solicitors who would be writing shortly to the tenant in respect of outstanding payments.

19/41/PC Any Other Business

41.1 There was none

19/42PC Next Meeting

The next Full Council Meeting to be at 7.00 pm on Wednesday 20th March 2019.

The meeting closed at 9.00 pm.

Signed as a true record of the meeting

.....Chairman

Dated.....