

KINGSWEAR PARISH COUNCIL
Minutes of the Extra Ordinary Meeting held in the Village Hall
on Wednesday 30th June 2021 at 6.00pm

Present: Cllrs L Maurer (Chairman), J Hawkins, P Burnell, E Jones, P Pudduck, H Newcombe

In Attendance: Miss Sue Balsdon – Clerk to the Council.

9 members of public present.

C/028/21 – Welcome from the Chairman

The Chairman welcomed everyone to the meeting.

C/029/21 – To receive any apologies for absence from the Meeting.

Cllr B Lowe, J Hacking, B Longland, G Webber.

C/030/21 - To receive any Declaration of Interest. [Councillors are also reminded that they must register any new interest or change in any interest already registered within 28 days of that new interest or change].

Councillor Pudduck declared an interest in agenda item 6i & ii (Minute Ref: C/033/21). Councillor Maurer declared an interest in agenda item 6ii (Minute Ref: C/033/21) and stated that she would not take part in the vote. Councillor Maurer said her opinion has not changed, since this matter was first raised. Parked cars either side of the road, would urbanise the environment and as a village in the AONB we need to maintain as much green as possible.

The Council Meeting was suspended to allow members of the public to ask questions and make representations to the Council:

Statement Resident 1:

I am asking that the Council act in the best interests of the Village regarding the strip of land on Higher Contour Road and vote to continue to keep the Parish Council's registered caution in place. Will you be making the decision using criteria used to judge planning and not on emotional argument?

This is a piece of land that obviously should have been included when the highway was registered for the village. It is a village amenity. The Caution the last Council placed on it, protects it from unsubstantiated claims. If this caution is left to stand, it will not cost the Council anything. The Council has already spent £2.5k on obtaining the caution and legal advice. Why would you not wait to see if Land Registry thinks the applicant has a claim.

At some point in the future, this land might be needed for the community. What happens if the Council fail to protect it and actually give it away. Not maintaining an interest in the land means that anything can be dumped on the verge, built on the verge, abandoned on the verge, or even claimed by an outside body and there is nothing anybody could do. Examples of this are already becoming apparent. Removing the caution will not solve this.

There are many Kingswear residents who want the Council to take forward the legal process for claiming the land. Will you listen to them. It will give future Councils the opportunity to manage it for the residents, or even dispose of it for the benefit of the community. This land has a monetary value. It is worth remembering that Bridge House land sold for £100k.

Residents have already committed to raising the required funds to take forward a legal process for claiming the land. A survey showing how the verge could be managed for parking, passing places, pedestrian protection, improvement of environmental habitats has been carried out. Residents have also had further consultation with a land specialist solicitor. Meanwhile, having put the Agenda item on hold for 6 months, what on-going research and debate, has Kingswear Parish Council done, to ensure that they are fully informed when voting away a village amenity?

Have Councillors circulated proof of the Mr Philips' unsubstantiated claim and the counter evidence that two different solicitors supplied to the last Council.

The statement of truth provided is now out of date, as the Land Registry applicant told me that he had only just seen the legal opinions of Boohay. The Council appear to be backing the applicant's unsubstantiated claim on the grounds that if he is the owner, he can manage the site for them. Where is the evidence to support this?

So far the Council has had no informed debate about how to proceed except to circulate the applicants unsubstantiated claim with no counter evidence. Most Council's would step up and manage the issue. We are being poorly served by our Council. Please protect future Kingswear residents.

Statement Resident 2:

I am here to ask for the Parish Councils support for our Land Registry application to formally register the title of the verge adjacent to our land.

Our application was made circa 12 months ago for the following reasons:

1. We were advised by District Council during efforts to remove the abandoned vehicles that if the land was registered any vehicles or items abandoned could be removed more easily.
2. We have been advised our boundary is between the bottom of the bank and the verge. There is difference of opinion on this and we wish to confirm it for the avoidance of doubt.
3. It is our understanding we are responsible for the bank and land above. We are concerned that if the bank is not protected erosion will occur when people try to create their own parking, this will affect the stability of the bank and trees over time.
4. We want to improve the look of this area and wish to create a wildflower verge to improve the look, and attract wildlife.
5. We would also like to offer a purpose built timber wheelie bin store to house the ever increasing bins on the verge and a community parking / passing area at the widest point in keeping with the surroundings.

We have no interest in any development, as has been suggested, we would even be happy to consider an 'uplift clause' so if any future owners attempt development the Parish Council would benefit from an uplift to be used on community projects. I have agreed to remove the fence although this has been vandalised and partly removed already. We are also keen to involve any interested parties in the planting, wheelie bin store and parking space. These ideas were welcomed during a recent conversation with Sue Puddock and following this conversation I requested to join the community group SOLVE so as to address any concerns some may have, discuss ideas and offer my services. Sadly, SOLVE confirmed that I was not welcome.

Without a registered owner people will continue to act independently. Already there is significant concern over the construction of a crazy paving parking space which appears to be for private parking and the storage of trailers. I cannot understand how I can be accused of a 'land grab' when one of the authors of the 'land grab' leaflet has constructed such an eye sore himself.

We gave a lot of thought to withdrawing our application due to the way we have been treated, however if we withdraw our application the stress endured will have been for no benefit, the verge will remain unregistered and will revert to being the unmanaged, scruffy verge it has always been. It will continue to be the subject of controversy and ill feeling.

Finally, I request the Parish Council disregard any support as result of the 'Stop the landgrab' campaign. The leaflet, along with previous social media posts and press articles, is inaccurate and misleading. I am also aware that in addition to this one local resident (and not doubt more) was advised during the leaflet drop that 'we were going to develop the verge and create an entrance to our property which could in turn lead to future development'. This is absolute nonsense and again misleading.

The leaflet drop is another example of bullying and intimidation and I feel strongly that if the support as a result of this campaign is taken into account it could be considered as support for the bullying and intimidation we have endured.

Statement Resident 3:

I knew nothing about the issue regarding the strip of land, until I received the leaflet through the door. My first concern was the way this leaflet was portrayed. The leaflet had no names on it. It says 'Stop the Land Grab'. It names the Chair of the Council and suggests very strongly that the Council has some vested interest and I found it offensive. If the solve campaign thinks this will persuade people like me, they are very, very wrong. It actually turns me against them, because it is nonsense. We have seen this many times in the past. Somebody needs to stand up and say, this sort of behaviour is unacceptable and I object to it very strongly.

Statement Resident 4:

I would like to register my huge support for the applicants and their home boundary Land Registration, leading to the verge of Higher Contour Road.

They have bought the land in good faith, they have maintained the land, they have invested in the community, they have improved the uncared for entrance vista into our village, and they plan to do more of the same.

The Parish Council should applaud and support them - and I ask you to do so.

They have been verbally abused and insulted by people hiding behind social media, who try to distort opinion through the local paper and now the anonymous leafleting. I further ask that the Parish Council state that they do not condone these actions, and give their support to the applicants, in this matter.

There are people in our community who allow their tenants to dump their rubbish on land they do not own, and others who vandalise other people's property and feel it is acceptable to store their goods and bins on land they know is not theirs, consciously undoing the good community work of others and physically trying to claim land they know is not theirs as their own, in a most appalling eyesore manner – surely the most offensive of 'land grabs' and one the anonymous leaflet chooses not to refer to, but is in fact one of these authors the cause?

The Council should be proactive in halting the actions of these people and be proactive in the support of those who invest time and money to the benefit of the community.

You, the councillors of the Kingswear Parish Council, have the opportunity tonight to support the long term commitment of a local family, committed to village life and our school, to the no cost maintenance and improvement of a village eyesore and its ongoing environmentally friendly re-wilding. Something we all can enjoy and benefit from.

Also to end the ongoing waste of your council time and hopefully then end the foul and vindictive actions of an unpleasant few, that are so unacceptable to so many of us in the village. Please act accordingly.

Statement Resident 5:

I firstly, would like to read a statement from a resident, who was allocated time to make representation at the meeting, but was unfortunately unable to attend.

I wish to confirm my support for the applicants Land Registry application.

The applicants have worked tirelessly to help remove the previously abandoned vehicles on the verge of Higher Contour Road, have removed litter and tidied what was previously an overgrown area no one has been prepared to maintain for decades. They are also committed to maintain the verge and plant wildflowers for the benefit of all at their own cost, despite the horrible and unnecessary treatment they have had from a small group of people over recent months.

One of the applicants grew up here in Upper Wood Lane went to Kingswear Primary School, where her Mum was a teacher. The other applicant has had boats and a holiday house in Kingswear for years. They love this village, their life-long friends and family who also live here and want it to look it's best. This is NOT a monied London family building a fancy holiday pad. This is a young family with limited funds making their forever home. Isn't it sad that this family, willing to spend their own time and money for the benefit of the community are being treated with such unnecessary aggression due to the pure ignorance of what is thankfully a very small minority of this village. Their efforts to improve the verge on Higher Contour Road, is simply a good deed with no hidden agenda. They have the support of many and I hope the Parish Council will support their Land Registry application, enabling them to continue improving this area.

My own representation is as follows:

I wish to register our total support for the splendid work that the applicants did recently to the land on Higher Contour Road. The entrance to our village looked a tip heap with old broken down cars, boats and general rubbish. The applicant, at his own expense cleared up all he could, cut the grass, brambles and general under-growth. He removed it all and erected a very tidy low fence. I understand from him, that he next intended to spread wild flower seeds along the whole area which would again improve for all of us the entrance our village.

I now see a new householder has removed the fence and laid claim to the verge, by concreting a broken slab base, as storage for his boat trailer and car trailer. Surely this cannot be correct and permissible?

We wish it to be noted by the council, that my wife and I applaud the public spirited work done by the applicants and believe they deserve the council's full support.

Statement Resident 6:

The SOLVE group asked me to use my skills and experience to survey the disputed verge and bank along Higher Contour Road and produce a report. I have produced an Executive Summary and report outlining the current situation. I provided the executive summary to the council. The report establishes the stakeholders' interest before detailing the environmental damage created and the current problems of parking and passing.

It shows how the use of the verge could create up to 15 off-road parking places, but recommends that the interests of the community would be best served by a balance of parking places, passing bays and pedestrian refuges. It demonstrates the poor state of biodiversity, habitat and visual amenity before going on to suggest how this should be improved.

Ownership of the verge and bank is critical to realising its potential. The applicant has asked that the caution applied to first registration of this land be removed. His requests if based on "ad medium filum" which is a legal device intended to correct errors, omissions and ambiguities in land boundaries related to land title alongside rivers and roads. It depends on the claimant owning the bordering land. In practice this is mostly used by developers who find an area of third-party land, or unregistered land, prevents their development by denying them access to roads or services critical to their development plans. Such strips of land are often called "Ransom Strips" because developers are prepared to pay disproportionately to obtain them. I am not saying this is the applicants intention, but should he obtain this land, and sell it in a package with other land, there would be nothing to prevent the owner applying to develop the land above the road.

In this case there is no doubt about what the applicant owns and this does not include the verge and bank abutting Higher Contour Road. The boundaries have been clear since the 1906 OS map was published. The Boohay estate solicitors confirmed on 15 Feb 2018 and again on 9 Nov 2018 that they had not held the title to the disputed land and did not pass title of the land to the applicant. The map in the applicant's planning application showed the verge and bank were contiguous and outside his property boundary. The planning application stated that his property site "is bounded by a wooded slope to the North". This wooded slope, the verge and bank, was outside his property for planning purposes otherwise it would have stated "bounded by Higher Contour Road to the North". At the time of the planning application the applicant demonstrably recognised that the verge was not his. He has said he wishes to see the verge managed on behalf of the community yet his claim is for only that part of the verge adjacent to his property boundary. This would still leave a residual element of unregistered land. Had his effort and expenditure been devoted to assisting KPC to acquire and manage the whole verge we would be close to achieving his stated objective.

Mr Philips claim of "ad medium filum" requires a presumption that he owns the land adjacent to the highway. KPC's own solicitor has stated that the claim is rebuttable and the presumption does not apply. The land alongside the road, namely the verge and bank, does not belong to the applicant.

Certain councillors have suggested that the caution should be given up because the council has no funds to improve the verge. Giving up an asset of both intrinsic and financial worth on this basis is highly questionable. For the council to give up the caution on the verge would be to accept the applicant's legal ownership of the land, it would bind future councils to the decision and remove any opportunity for them to manage this resource for the benefit of the community. It would also open the way to future disputes over development. To remove the caution would be both legally and morally wrong. I have provided councillors with all the evidence and legal opinions necessary to rebut the claim. The claim should be rebutted and the Land Registry asked to retain the caution on first registration indefinitely.

The Council reconvened to discuss the following items:

C/031/21 - To resolve and finalise the Annual Return for the year 2020/2021:

i) To receive and note the Annual Internal Audit Report.

The Clerk advised that the Parish Council had received a positive response in 81 of the 83 internal audit compliance requirements. The two negative responses relate to the Council's review of its risk and asset registers. Both of these items are subject to an annual review and this would ordinarily be done at the Annual Meeting of the Council. Part of the COVID legislation which allowed virtual meetings, also gave local councils the option of not holding an annual meeting during 20/21. The Council opted not to have an Annual Meeting and therefore the annual review did not take place until April 21.

ii) To approve the Annual Governance Statement

The Internal Auditor has advised, that it will be necessary for a negative response to be entered on the Council's Annual Governance Statement, in respect of assessment of risks (Assertion 5) and that this issue may be subject to further query by the external auditor.

The Annual Governance Statement completed by the Clerk was reviewed and approved by Councillors.

iii) To approve the Accounting Statement

The accounting statement compiled by the Clerk has been checked by the Internal Auditor for accuracy. The prior year figures have been restated for 'Staff Costs' and 'Other Payments', as nationally it was agreed that the working from home allowance paid to Clerks, should not be classified as a staff cost. The prior year fixed assets figure has also been restated, due to asset disposals in year and a correction to the asset list in regard to a war memorial previously listed.

The 20/21 Accounting Statement was reviewed and approved by Councillors.

iv) To set the date for the commencement of the period for the exercise of public rights.

The Council approved the proposed dates, for the Exercise of Public Rights - 01.07.21 to 11.08.21.

C/032/21 - With regards to the return to face to face meetings:

i) To consider frequency of Full Council meetings.

The Devon Association of Local Council's report, regarding the return to face-to-face meetings states:

'The Council is required as a minimum, to meet once in May for a statutory annual meeting and at least three other times during the year. This means that the Council will not have failed in any regard, if it reduces the number of public meetings over the next few months. You may wish to keep the number of physical meetings to a minimum and use the scheme of delegation for non urgent business.'

Cllr Hawkins advised that other local Council's have opted to have bi-monthly meetings.

It was agreed that a Full Council meeting, would not be held in July 21. The Council do not meet in August and so the next Full Council meeting will be held in September.

ii) To consider an extension to the Scheme of Delegation.

The Council agreed to extend their scheme of delegation and for this arrangement to be reviewed at their September meeting.

C/033/21 - In regard to the strip of land, Higher Contour Road:

Councillor Maurer suspending standing order 7a, in order that Councillors may again consider whether to pursue ownership of the strip of land, in regard of the recent correspondence from the Land Registry, advising of an application affecting the Council's caution title.

i) To consider whether to pursue ownership.

ii) To consider response to Land Registry - Notice of an application affecting caution title.

The following points were raised by Councillors:

Cllr Burnell

I have lived in the village a long time and the verge has always been an eyesore. It seems as though no one has ever cared about it and it has only become prominent, when somebody wants to do something with the land. I trust the applicant when he says that he does not want to develop the land and I believe he has good intentions for the verge. I would not support the Council claiming this land.

Cllr Newcombe

Enquiries were made with Michael Pedrick, the land agent for Boohay and also Wollen Michelmore, who act as Trustees for the Boohay Estate, to establish ownership of the strip of land. They advised that they had been unable to find any evidence which might lead to the view that the embankment in question, is within the title to Boohay and that their conveyance plans show the boundaries of Lower Boohay as adjoining the embankment area rather than including it. I believe the strip of land should be a community asset and that the caution placed on the land should remain in place.

Cllr Jones

I am concerned that the SOLVE committee, mostly appear to live opposite the strip of land. There is lots of talk about the community, the village and the Parish objecting, but I think it is just those residents living opposite who object. If the SOLVE committee had a strong argument, they would not have had to put out the leaflet or make things up about development. If the SOLVE group want to start digging away to make car parking spaces, this will erode the bank, which we know belongs to the applicant, so they will be very restricted in what can be done there. I would support the applicant in his claim, as I have not heard a convincing argument otherwise. The SOLVE campaign has been run for the benefit of a few nearby residents, not for the whole village and not for the whole community.

Cllr Hawkins

I believe we are here to serve the entire Parish and do our best for all residents. For Kingswear Parish Council to take on the liability of the strip of land would be a huge disservice to our tax payers. The farmer has never taken responsibility for the maintenance and responsibility for the trees and Devon County Council have confirmed that they have no records which indicate they are the owner of the land. For a small group of residents, to expect a large proportion of tax payers money to be spent to create parking spaces for a few properties, is not good value for money and it is not what the Parish Council are here for. The Parish Council

had a divisive issue to deal with a number of years ago, with the play area, which was very unpleasant. This issue has been just as divisive and equally as unpleasant. All of us are residents and all of us are trying to do our best for the village.

The SOLVE groups campaign, was about saving our verge, but creating car parking spaces on the verge will destroy it. Devon County Council Highways have said, that if the Parish Council took on the land, then it would be for them to create and construct the parking/passing bays. It has been said that the land is worth £100k, but the land is situated outside the development boundary, so properties cannot be built there.

I cannot support this Council taking on responsibility of the verge.

Cllr Pudduck

There have been lots of inaccurate statements made at this evenings meeting. It has been stated that the verge had not been looked after, but I have maintained the verge for many years and my wife has paid for the trees to be cut back, because nobody else would. It has been said that maintenance of the trees and bank could prove very costly for the Council, but the trees are on the applicants land and therefore this would be his responsibility. It has also been said that only a few residents are interested in the land, but a 'Save our Verge petition was signed by over 300 people. I agree that they didn't all live in the area, but at least 100 people live in this village. It has also been said that the applicant, has done a great job of looking after the verge, but it is now looking very unkempt.

It was proposed that Kingswear Parish Council responds to the Land Registry, to retain the caution on the land, evidenced by the three legal opinions from Solicitors.

Cllrs Newcombe and Pudduck voted in favour of the proposal. Cllrs Maurer, Hawkins, Jones and Burnell voted against the proposal.

Cllr Maurer, handed over to Cllr Jones to chair the meeting, in regard of her declaration of interest and did not take part in discussion regarding the Council's response to the notice of application affecting caution title, received from the Land Registry.

It was proposed that the Parish Council withdraw their caution on the strip of land.

The Clerk advised, that if the Council do not respond to the correspondence received in regard of the application for first registration and the application is successful, this will result in the Land Registry removing the caution title, to the extent of the land included in the application.

Cllrs Hawkins, Jones and Burnell voted in favour of not taking any further action in respect of the first registration application on the strip of land. Cllrs Newcombe and Pudduck voted against this proposal.

By Order of the Council

Sue Balsdon

Sue Balsdon
Clerk to the Council

The Meeting ended at 6.55 pm.

Minutes Approved: Councillor L Maurer – Chairman