

## Church Fenton Parish Council

### Minutes of the Extraordinary Meeting of Church Fenton Parish Council held on Tuesday 20th June 2018 at the Village Hall, Main Street, Church Fenton

Present: Cllr Sarah Chester; Cllr Jo Mason, Cllr Andrew Mason, Cllr Craig Blakey, Cllr Rebecca Hunt, Cllr Stuart Spensley, Cllr Ross Higham

Jeremy Sherlock (Clerk)

120 members of the public

18. Apologies, Declarations, and Dispensations

None

19. Acquisition of the Community Shop

The Clerk presented a report on the current position with regard to the acquisition of the Community Shop.

At its meeting on 23rd November 2018 the Council resolved the following:

Subject to the confirmation of borrowing powers by the Secretary of State, the Parish Council:

1. Acquire the former shop and Post Office for £350,000 and Councillors be authorised to sign the legal documentation
2. Up to £4,000 be approved for Stamp duty, Valuation cost, Solicitors fees and Land registry fees
3. A lease be agreed with the Community Shop Company to be issued in parallel with the building acquisition on the basis of the draft Heads of Terms attached to this report, with Councillors authorised to sign the legal documentation. The Clerk be delegated to prepare the detailed documentation prior to signing.

An overage clause was introduced after the acquisition had been agreed and was first discussed at the meeting of 11th January 2018. At its meeting on 17th May 2018 the Council resolved the following:

Resolved that the Clerk write to the vendors of the Community Shop asking that the overage clause be amended so that it only applies when the property is sold, and not when planning consents are granted.

The Clerk wrote to the vendors via Solicitors on 18th May 2018. A meeting arranged with the vendors and their Solicitors on 19th June 2018 has been cancelled, and the vendors Solicitors have advised that the vendors are not prepared to make any amendments, and have given a deadline of 12 noon on 21st June to confirm the intention to proceed.

The key points in the overage clause are as follows

- a. Overage is triggered by either the implementation of a planning permission or by a disposal where the land has benefit of planning permission. This applies to all users including the Community Shop.
- b. The overage clause is for 30 years.
- c. The overage is calculated by subtracting the enhanced value (resulting from the planning approval) from the base value, with the vendor receiving 50% of this value. These are the values at the "trigger date" either agreed between the parties or provided by an independent surveyor appointed by both parties.
- d. A lease of less than 7 years does not count as a disposal
- e. Fees required to obtain planning permission cannot be deducted from the overage payment

The Council have funds in place to progress the acquisition through the Public Works Loan, so the issue for consideration is the risk to the Council and Parishioners. The Council were happy the Business Plan and the ability to recover value through disposal adequately mitigated this risk, though

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this decision was made prior to the Council being aware of the Overage Clause. In terms of risk, the Council needs to consider both the impact and likelihood of various scenarios happening. The priority for the Council in the event of a need to dispose of the building is to recover the value of the loan – the Council are not investing in the building to generate a “profit”.

The District Valuer has been consulted with regard to the property purchase. They have carried out a formal valuation and have advised that its value as a Shop/ Flat (i.e. current use) is £350,000. They have not valued the building/ site for any alternative use. This would in any case need planning consent which would impact on value.

Whilst the purchase would be much simpler without the Overage Clause there is no reason why it cannot be requested by a vendor. There is a need to consider the potential risk to the Council of the Clause:

- a. No overage is payable if the building was sold as a shop/flat
- b. With the valuation being based on a trigger date it is possible that overage would be payable even the building value falls. However it is reasonable to assume that inflation will reduce this risk as time passes.
- c. The payment of overage on a disposal can be funded by the disposal so should not be a significant risk.
- d. The main concern is the planning permission trigger. This creates a potential future cost for the community shop should they wish to extend in the future (though this can be mitigated for the Council by transferring this cost to CFCS through the lease). In addition should the Council need to sell the building in the future the clause may put off potential purchasers.

There is also a need to balance the risk caused by the overage to the risk to the community caused by the loss of the shop. If the shop continues to trade successfully there is no risk to the Council at all, and there is also an opportunity to generate income from the first floor.

The Clerk recommended that the Council proceed with the purchase of the Community Shop.

The following was discussed:

Viability of shop – the shop is trading well and should be seen as a long term proposition. The first floor can also be let generating additional income. The risk to the Council is therefore exaggerated as disposal for an alternative use may never be required.

Mitigation – the lease can include a clause to transfer the responsibility for overage payments to the Shop Company, and a 6 month Bond has also been offered.

Risk – concerns were raised about the continuing risk of the overage clause should the Council need to dispose of the building. The building had been on the market without an overage clause and it would put off prospective purchasers. Concerns were raised that current mitigation does not adequately offset this risk.

Alternatives – alternative sites were suggested including the Village Hall and Old School Playing Field. It was confirmed that the pub was not an option.

Social benefits – the social role of the shop had not been adequately considered when assessing risk.

An amendment (1) to the Clerk’s recommendation was proposed and seconded:

“The Parish Council support the purchase of the shop through the PWLB, with the mitigation of the risks introduced by the Deed of Overage through:

- 1, Personal Guarantee from current Directors of CFCS Ltd (regardless of future resignation as director) to guarantee the payment of rent & any overage fees
- 2, With the preferred option that the CFCS Ltd obtain sufficient funding to purchase the building from the PC at the value of the PWBL & cover any associated costs which include but not limited to payment of stamp duty and legal costs associated with the sale.”

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A further amendment (2) was proposed and seconded:

“That the Parish Council purchase the shop premises as originally agreed (23.1.17) but seek protection from any overage by:

1. Including a clause in the lease that overage triggered by CFCS Ltd must be paid by CFCS Ltd;
2. Take a Bond set by an independent RICS valuer to mitigate loan costs and any shortfall in the value of the premises in the case of the need to sell”

Amendment 2 was carried.

**Resolved that the Parish Council purchase the shop premises as originally agreed (23.1.17) but seek protection from any overage by:**

1. Including a clause in the lease that overage triggered by CFCS Ltd must be paid by CFCS Ltd;
2. Take a Bond set by an independent RICS valuer appointed by the Clerk to mitigate loan costs and any shortfall in the value of the premises in the case of the need to sell

Meeting closed at 8:45 pm

Jeremy Sherlock; Clerk; [clerk@church-fenton.net](mailto:clerk@church-fenton.net); 07981 371937