

HONITON TOWN COUNCIL

Minutes of the Finance and Policy Committee Meeting of the Town Council held via Zoom on Monday 28th September 2020 at 7.20 pm

Present

St Michael's Ward

Cllr J Taylor
Cllr J Zarczynski (Chairman)
Cllr J McNally
Cllr L Dolby

St Paul's Ward

Cllr R Coombs
Cllr C Gilson
Cllr P Carrigan

In attendance

Heloise Marlow, Deputy Town Clerk
10+ Members of the public

PART A

20/1/FP The Deputy Clerk welcomed Councillors and members of the public who were attending via ZOOM and confirmed that the meeting would be recorded. The Deputy Clerk apologised for the late start to the meeting.

20/2/FP - To elect a chairperson of the Finance and Policy Committee

Cllr Zarczynski proposed Cllr Carrigan, and this was seconded by Cllr Taylor. No other members were proposed. This was resolved when a unanimous vote was recorded, and Cllr Carrigan took the chair.

20/3/FP - To elect a Vice-chair of the Finance and Policy Committee

Cllr Zarczynski proposed Cllr Taylor, and this was seconded by Cllr Carrigan. No other members were proposed. This was resolved when a unanimous vote was taken.

20/4/FP To receive apologies for absence

None received

20/5/FP To receive declarations of interest and receipt of requests for new DPI dispensations on items on the agenda

None received.

20/6/FP To note the grant of dispensations made by the Town Clerk in relation to the business of this meeting.

None were made.

20/6/FP Public question time on items on the agenda

Mr David Perkins asked the following questions:

Q1 - Could Cllr. Taylor confirm that he does not have a pecuniary interest in the outcome of the legal action against Baileys?

Cllr Taylor confirmed that he had not pecuniary interest in the outcome of the legal action against Baileys, save that he is a rate payer and so has the same interest as all ratepayers in Honiton.

Q2 - Could Cllr. Taylor confirm that in the event of HTC having a successful outcome to their claim against Baileys that he will not be pursuing any legal action against Honiton Town Council (HTC) to recover his legal fees that he has incurred as a consequence of initiating the Judicial Review against HTC in respect of his breach of the code of conduct?

Cllr Taylor advised that the breach of the code of conduct and the sanctions were unlawful and he guaranteed that he would not pursue any claim against HTC as he has no losses to pursue but could not provide further details as it was a closed court document.

Q3 - Could the mayor confirm that when HTC initiated the legal action against Baileys that the Beehive construction report prepared by myself and sent to all councillors in July 2017, was provided to Foot Anstey as part of the evidence for them to consider whether the claim had any merit?

Cllr Zarczynski confirmed that at the meeting attended by himself and the former Town Clerk with Foot Anstey, all relevant emails between HTC and Baileys and a copy of Mr Perkins' report were provided. Everything was provided to ensure that they had a complete clear picture and HTC only proceeded on their advice. Mr Perkins' report was also provided to an independent expert as requested by Baileys.

Mr John Burgess asked the following questions:

In respect of Item 9: Bailey's Partnership Dispute

- 1. If HTC with draw from the dispute will they face a bill for costs from Bailey's?*
- 2. If HTC continue with the dispute, how much money have they budgeted for this?*
- 3. If the council continues when do they expect a verdict?*
- 4. If the council loses will the remaining members of the council resign as they will have been party to the loss of over £100,000 to Honiton tax-payers?*

Cllr Zarczynski answered on behalf of the Council. He advised that the legal costs referred to by Mr Burgess did not just relate to the claim against Baileys but also included legal costs dating back to 2015 relating to the Judicial Review. The legal costs incurred in relation to the Baileys Partnership dispute were not that much different to the legal costs incurred by the Council in dealing with the HCC disputed invoices. As regards Cllrs resigning, personally he had no intention of resigning just

because a group of former Cllrs had whipped up public opinion. Of all the malicious complaints made recently to the Monitoring Officer, those which have been investigated have been dismissed and he was confident that those which remained would also be dismissed and so he had no reason to resign.

Mr Burgess responded stating that Cllr Zarczynski had not answered his question which was would Cllrs resign if the claim against Baileys is lost?

Cllr Zarczynski confirmed that the matter was to be debated later on in the meeting in Part B and as such no final decision relating to the claim had been made. HTC has always acted on legal advice from start to finish. If HTC had been advised not to pursue the claim, it would not have pursued it. HTC has made all decisions according to legal advice as HTC has a duty to make every effort possible to attempt to recover public money when there has been an overspend of public money.

Mr Burgess reiterated his question 2 – how much had the Council budgeted for to further the dispute?

Cllr Zarczynski confirmed that he was unable to answer this question as the last finance meeting had taken place in 2019.

Mr Burgess reiterated his question 3 – if HTC continues to pursue the claim, when is the reasonable time to expect a verdict, as it was now 12 months since it went to arbitration?

Cllr Zarczynski advised that COVID 19 had caused upheaval everywhere although HTC had tried to continue despite this. The dispute was an agenda item for this meeting and Cllrs had a number of options. Hopefully a decision would be made tonight.

Mr Burgess stated that the figure quoted in his question 4 did not include any other legal issues but was made up of what HTC had incurred in costs and what Bailys might claim against HTC added together although the final figure could be more or it could be less.

Cllr Zarczynski advised that to the best of his knowledge the legal costs incurred by HTC to date in respect of the Baileys dispute were nowhere near £100,000 and if Baileys made a claim against HTC for costs, that would be covered by insurance.

20/7/FP To confirm the accuracy of the minutes of the Finance and Policy Committee meeting held on 1st July 2019.

A copy of the minutes had been circulated in advance.

The five Members who had attended the Finance and Policy Committee meeting on the 1st July 2019 unanimously **RESOLVED** to approve the minutes

Proposed by Cllr Zarczynski and seconded by Cllr Carrigan.

20/8/FP Honiton Community Complex

The Deputy Clerk confirmed that prior to the Town Clerk's resignation on Wednesday 23rd September, which was the day that the Finance and Policy Committee Agenda had to be sent out, the Town Clerk had prepared the majority of the report attached. The Deputy Clerk finalised the report on the same day and that it was for Members to discuss the contents of the report and to consider going forwards what recommendations they wished to make to Full Council regarding the level of support to provide to HCC.

The Deputy Clerk confirmed that she had spoken to Mrs Serena Sexton prior to the meeting and that Mrs Sexton had advised that she did not agree with some of the information in the report. Members may therefore wish to ask Mrs Sexton to comment on the report. Members need to address the issue of outstanding insurance premiums owed by HCC, the outstanding SLA invoice, which has been part paid, and Members had at the last meeting referred to this Committee the grant requested by HCC. At the last meeting Members had queried whether they had the authority to make such a grant to HCC. The report sets out the findings of the research carried out in respect of the legislation which would enable HTC to provide HCC with the grant requested and as could be seen HTC did have the powers to do. HTC did not require the General Power of Competence to rely on any of the legislation listed and as such the Deputy Clerk confirmed that HTC did have the power to provide HCC with grant funding as requested if they wanted to do so.

The Chairman invited Mrs Sexton to speak and she made the following points:

- The report refers to an insurance payment which it was agreed in November 2019 would be paid by HCC no later than 30th April 2020.
- This payment relates to the 2019/20 insurance and was waived by the Mayor during a meeting between Mrs Sexton, the Mayor and the Deputy Clerk 5 months ago, at which meeting the Mayor also authorised the Deputy Clerk to make a £4000 payment on account of the service charges for 2019/20. The Mayor agreed to this due to the COVID situation and therefore that insurance payment is not outstanding as stated in paragraph 4 of the report.
- HCC had yet to receive any invoice in relation to the insurance due for 2020/21 but will fulfil its obligations under the lease and SLA and requested that an invoice for this insurance be sent to HCC who will then pay it.
- HCC has recently received a generous donation, but this did not mean that HCC no longer required HTC funding. Mrs Sexton stood by all the information previously provided to HTC. The donation has allowed HCC to open its doors that day.
- HCC still need the cooperation of the HTC to look at an annual payment. HCC have yet to provide HTC with invoices for the last 2 quarters of the SLA as she believed that HTC were willing to meet to discuss an annual payment instead.
- Will HTC show the people of Honiton that they are willing to support HCC in providing services for Honiton.

- An agreed annual payment at the start of each financial year would allow HTC and HCC to know exactly how much to budget for

The Chair invited the Mayor to respond.

Cllr Zarczynski made the following points:

- He had met with Mrs Sexton and the Deputy Clerk a few days before the March lockdown and he did agree to waive the insurance premium in view of the situation.
- This was because further to the 2 meetings he had had with Mrs Sexton at the time he was of the view that progress was being made and that there was goodwill on both sides.
- However, he was disappointed when at the last meeting HCC claimed that HTC should pay for all the insurance.
- Also, HCC are also claiming that HTC short changed HCC by £20,000.
- As regards the £6000 that Mrs Sexton refers to he confirmed that he had advised her that HCC would not be pressed for payment and that she should not worry about it, and that HTC would waive it for the time being but that he had no authority to waive payment completely as this would need to be agreed by Full Council although he was sure HTC would be reasonable when it was debated.
- He did authorise a £4000 payment towards the SLA to show goodwill to assure Mrs Sexton that HTC would help where it could, and he did inform Members of this payment.
- HTC made a £20,000 payment to settle the matter of the disputed invoices and this was more than HTC should have paid if they had followed the advice given to them by authors of the lease.

Cllr Coombs spoke and stated

- He knew nothing regarding the waiving of last year's insurance payment.
- He could understand that there may be problems with this year because of COVID 19 but not with last year.
- He was also concerned about the ongoing situation with HCC and raised possible issues with the way the company had been set up under the General Power of Competence. He was of the view that the external auditor should be asked to look into this.

Mrs Sexton was given permission to respond and did so as follows:

- She did not know what Cllr Coombs was referring to, but any scrutiny would be welcomed by HCC, who are more than willing to open up their books to HTC.
- Mrs Sexton is also a magistrate and had to obtain permission to be the Chair of HCC and so if Cllr Coombs believes that HCC has acted improperly then he must contact her in writing setting out his concerns.

Cllr Taylor spoke and stated:

- He queried whether the conversion of the Council owned company to a Charity under the General Power of Competence had been done correctly.
- There were issues surrounding this which needed to be investigated.
- He also queried the process by which HCC contributed to the insurance of the Beehive.
- HTC's obligations under the SLA were subject to a review of the invoices which due to COVID 19 had not been reviewed.

Mrs Sexton asked that the Committee make a recommendation as to a set annual amount which HTC would pay to HCC.

Cllr McNally spoke and stated:

- She raised issues caused by COVID 19, which are escalating and the burden an annual payment of £45,000 per year to HCC by HTC would have on the taxpayers of Honiton who are already suffering from the effects of COVID 19.
- She queried whether COVID 19 made the Beehive's entertainment provision viable.
- Her wish was to reduce the amount paid by Honiton residents as part of their council tax by reducing the precept next year.
- The recent private donation received by HCC she had understood had given HCC the funding it required and as such she could not understand the request made by HCC of HTC.

Cllr Zarczynski spoke in support of Cllr McNally's comments and stated:

- If an annual grant of £45,000 was given to HCC, over the next 5 years remaining on the lease this would equate to around £250,000.00.
- HTC had not budgeted for such an amount.
- He had received many objections to such a grant being provided to HCC by members of the public, especially during the current difficult times.
- HCC can apply to HTC for a grant like any other organisation as part of its grant process.
- HTC and HCC have to work within the terms of the lease and the SLA.
- He welcomed the recent private donation received by HCC although advised that as landlords HTC had not been notified of the donation nor its terms.

Mrs Sexton was allowed to respond and confirmed that:

- HCC had carried out the required checks in relation to the private donor.
- This did not remove the responsibility of HTC to keep to their commitments.
- HCC was open to discussing the actual amount of assistance to be provided by HTC if it was considered by Members that the request for £45,000.00 per year was too much.

After further discussion relating to the above Cllr Carrigan proposed that 3 Cllrs meet with HCC to take the matter further as the current meeting was not progressing the issue. Mrs Sexton confirmed her agreement to the proposal but advised that any meeting would need to be recorded. It was also agreed that Cllr Carrigan would make

arrangements to review the HCC invoices provided in support of the SLA invoice submitted.

Cllr Coombs advised that he would put his concerns in writing as requested by Mrs Sexton prior to the meeting proposed.

Members **RESOLVED** by 6 votes for with 1 abstention that Cllrs Zarczynski, Carrigan and Taylor meet with 3 representatives from HCC on Monday 5th October 2020 at 12pm at the Beehive, with the meeting to be recorded and minutes provided thereafter.

Proposed by Cllr Zarczynski and seconded by Cllr Gilson

20/9/FP Part B items

Members **RESOLVED** unanimously to take item 15 into Part B of the meeting that deals with exempt business

Proposed by Cllr Zarczynski and seconded by Cllr Carrigan.

20/10/FP Baileys Partnership Dispute

Members **RESOLVED** by 6 votes, with 1 abstention to recommend to Full Council that HTC take no further action due to limitation issues against Bailey Partnership.

Proposed by Cllr McNally and seconded by Cllr Zarczynski.

29/11/FP To close the meeting

The meeting was closed at 21.05pm.