

CLERKS REPORT OCTOBER 2022

1. STRATEGIC SITES

a. Hillside Gardens Allotments

There has been some movement since the last report and terram weed suppressant fabric has been laid on the Phase 1 allotments. This is to naturally kill all the weeds, and this will then compost. This needs to be covered for 6 months. Barratts say: "In April, this cover will be taken off and each allotment will be rotavated and then the shed bases placed. Following the shed bases being placed we will then Erect the sheds ready for occupation. We are also painting the steps with anti-slip paint on each of the treads. We will re-paint in April before the allotments are handed over."

For the sake of a correct record, at the February site meeting we did not agree to the delay in the work due to the bird nesting season and were led to believe that work would be starting imminently.

b. Saxon Brook Allotments

Redrow have advised a workplan of:

November / December 2022

- Cultivating soil in whole allotments area
- Installing disabled sleeper beds

December 2022 / January 2023

- Turfing between allotments to be undertaken
- Existing chain link fence to be removed
- Sheds to be erected

January 2023 / February 2023

- Hedge planting and tree planting to be undertaken
- Benches & bins to be installed
- New chain link fencing around allotments to be erected

c. (In)Considerate Constructors

We received reports and photographs of Maddick Road (from Hawkins Road to the Westclyst Primary School) of a telehandler being used from the public highway as access to nursing home windows. The boom extended across the full width of the road, with people driving underneath it. It was strongly advised that this was reported to the Health & Safety Executive. The EDDC Planning Enforcement Officer had visited the site on the previous afternoon to follow up our last complaint and witnessed this practice happening.

d. **Bloor Homes (Pinn Court) Residential Home**

We have received a letter from Bloor Homes outlining the lack of commercial interest in the delivery of a Residential Home on the Pinn Court site. Current planning permission on the plot of land immediately adjacent to Pinn Hill is for a bed nursing home; given the lack of interest the developers have notified us of their intent to apply for residential housing on this plot of land instead. It will need to come through the planning system as a stand-alone Full application and Council will have the opportunity then to make representations; note this letter is likely to be submitted as 'proof of community consultation' as part of that application.

Given the need for a community facility at Westclyst and lack of community engagement in the pre-app stage for this change of use, an email has been sent to Bloor Homes requesting to open a dialogue around the potential for this alternative use of part of the site.

We have received a response to the email to say: "As it stands, there is no internal appetite for us to use any part of this site for alternative uses, commercially we do not want to reduce the coverage we currently have proposed (45 homes). Please note, that whilst not a community centre, Bloor Homes have provided (or committed to) a shop (Co-Op), skatepark and various play provision, country park including food growing area/allotments on the wider Pinn Court development."

e. **Tithebarn Dog bins**

Following my previous report on overflowing bins, Cavanna Homes arranged a clear up operation and bin clean. We discussed options for ongoing service of the bins and they were in agreement that we set up a similar agreement to that which we have at Westclyst, where the bins are on our service contract and we re-charge the management company. Unfortunately, Streetscene has confirmed that there is no capacity for more bins, and so this is currently not possible. We have advised Cavanna of this and hope that they will source an independent contractor to service the Tithebarn bins on a regular basis. We have asked Binit, our waste contractors if this is something they can offer; we are awaiting their response.

2. PAVILIONS

a. **Warm room scheme**

Further to my last report, it has been confirmed that the Broadview Community Room will be open as a warm hub on Tuesday, Wednesday, and Thursday 10:00am - 4:00pm starting 14th November 2022. This information is being printed in the Christmas broadsheet. An East Devon District Council initiative, residents will be able to collect free hats, gloves, scarves and blankets if they need them. There will be information available from EDDC's Financial Resilience team to help residents with accessing benefits and extra payments. They will also be providing advice on saving money on meals and give other tips to help get through the cold months.

b. Football

i. veterans

We have received notification from a member of public that a visiting player was urinating in the hedge next to Gracey Court. The pavilions and public toilets were open during the match. This will not be tolerated and the team will not be welcome again.

ii. Girls squad

The first girls team at Broadclyst FC is up and running! Lovely to see and thanks to all who work so hard to facilitate youth football in the parish.

c. Routine maintenance

Both gas boilers have had their annual service and the landlord gas safety certificate has been issued. PAT testing has been carried out this autumn across all council premises. The carpet was steam cleaned over half term.

d. Energy efficiency

As recorded in the previous Clerks report, the current energy contract expired in September 2022. Despite extensive market research for the best price, and subsequently entering a one-year contract to avoid the risk of out-of-contract variable prices, we are still looking at a massive increase in the utilities costs.

Recommendation:

That the council resolves to

- i. in the short term, invest in improving the energy efficiency and running cost of the building (i.e., looking at additional loft insulation, adding infra-red ceiling heaters to cut down use of the gas boiler);
- ii. in the long term, assess options for sustainable heating (i.e., air source, solar).
- iii. set a project budget and to delegate maximum spend to officers.

Reasons: to reduce utilities costs; to switch from fossil fuel to renewable energy in line with the climate emergency declaration and Neighbourhood Plan policies.

3. OFFICE LEASE

The office lease expires in April 2023. The renewal figure from the landlord (to inform budget setting) for a five-year lease brings an increase of 8.7% (from £6.9k to £7.5k p.a.). The service charge percentage at 15% remains unchanged. A desk-based analysis of alternative options shows little choice of a comparable size, with nothing any closer to home than our current location.

The long term vision of establishing a permanent home for the council in the parish - be that at Westclyst, Tithebarn, Broadclyst, or one of the smaller hamlets - remains part of the long term strategy, however is unlikely to be achieved before April 2023. To this end, the new contract will contain a break clause at three years; this coincides with the timing of the upward only rent review (in line with inflation).

Recommendation:

- a. That the council resolves to enter a five-year lease with three-year break clause at the annual rent of £7,500
- b. That the council considers opportunities coming forward through the Neighbourhood Plan mixed use / economic site allocations.

4. YOUTH PROJECT – COMMUNITY GRANT SPEND

The Broadclyst Theatre Group (BTG) ran a successful summer project, funded by a council community grant of £1500. There was an additional spend of £387, half of which was for chaperone licences (safeguarding).

The total project cost was £1770.22, an overspend of £270.22 (BTG has submitted receipts to validate its expenditure).

Grant balance

1500.00	Agreed grant
1383.22	Grant monies already paid out
116.78	Grant balance remaining
387.00	Additional expenditure total
270.22	Total project overspend
70.00	sound system hire (from jubilee)
£340.22	total to BTG

Recommendation: that the Council awards a further community grant of £270.22 + £70 to cover the total cost of the project and pay for the jubilee sound system which was not included in the original jubilee grant application.

5. STREET NAMING

We have just submitted names for the first phase of Persimmon developments in the eastern part of Tithesbarn Green site. Names have been taken from the Tithemap and are farmers/farm workers who would have historically worked those fields.

6. MEETING VENUE

In the September meeting, there was an agenda item request to look at holding meetings in the back room of the Parish Church.

The topic of whether a civil council can fund a parochial council's responsibilities – often grass cutting / churchyard maintenance - has seen much debate over the years, with different interpretations being used on both sides to add weight to their respective arguments. The [Local Government Act 1894](#) sets out in legislation the relationship between the Church and Parish Councils. [Part 1, section 6](#) (a) and (c) relate to exceptions in the transfer of all powers, duties and liabilities from the vestry to the Parish Council; [Part 1 section 8 \(1\)\(i\) and \(k\)](#) clarifies that the parish

council may execute works in relation to parish property and incur associated expense *save for* where they relate to affairs of the church.

More recent legislation does make provision for some elements to be shared between parochial and civic councils, such as s.214(6) of the Local Government Act 1972 in relation to burials, s.215 for maintenance of closed churchyards, s.137, s.138B for the support/facilitation of a religious event. The Localism Act 2011 introduced the General Power of Competence (GPC), which this Council has resolved to use as a Power of first resort given it meets the criteria set out in the Parish Council (General Power of Competence)(Prescribed Conditions) Order 2012/965, however it is important to note that the above specific permissions and GPC cannot be used to 'override' activity that is prohibited by other Acts of Parliament.

Until such time as there is further legislation or indeed case law to resolve the question of whether the 1894 Act restrictions override the provisions in later Acts, it is generally accepted that a Parish Council carrying out or funding works relating to the Church would be acting ultra vires¹ (save for where express consent is permitted in later Acts). Incidentally, the clock is a different matter. The Parish Councils Act of 1957 section 2 gives parish councils the power to provide public clocks and although the clock is housed in the Church Bell Tower, one presumes that at some point in history it was designated as a public clock rather than a church clock.

The above paragraphs digress somewhat from the original question, but briefly sets out the relationship between civil and parochial councils and the discharge of their respective duties. The civil (parish) council is empowered² to hire premises for its meetings. There is a debate to be had, however, around the inclusiveness of holding a meeting in a religious building. [The Public Bodies \(Admission to Meetings\) Act 1960](#) and [The Equality Act 2010](#) place a responsibility on the council to provide – as far as is reasonably possible – a venue that is accessible and inclusive to all. In today's multi-cultural society, the council should consider whether it is excluding other religions and cultures, and indeed atheists, from attending council meetings if they are held in a Church. In terms of accessibility, the Broadclyst parish church does have a wheelchair slope inside, yet to reach the church itself one must negotiate either a narrow path and gate, or access over the cobbles and through the main lych gate, neither of which is ideal (or easy in the dark).

Traditionally, many civil councils said prayers at the beginning of their meetings; however, this practice is no longer permitted following a legal test case. In *R (National Secular Society and another) v Bideford Town Council* [2012], the High Court held that the practice of saying prayers at the start of council meetings is ultra vires and, therefore, unlawful.

The case tested whether the council had legal statutory powers to hold prayers during council meetings and the high court ruling clarified that s111 of the LGA1972

¹ Ultra vires literally means 'beyond the powers'. Acting ultra vires or making decisions that are ultra vires (unlawful), opens a council to challenge through the courts and judicial review processes. Other risks include reputational damage and financial costs.

² Local Government Act 1972, Schedule 12 (10)(1)

Act did not extend to 'permitting the religious views of one group of councillors, however sincere or large in number, to exclude, or even to a modest extent, to impose burdens on or even to mark out those who do not share their views and do not wish to participate in their expression of them'.

Because the judge found the practice unlawful under the Local Authority Act, the arguments put forward under the Equality Act and the Human Rights Act were not tested in the high court. However, it is not unreasonable to draw from Equalities legislation that a parishioner who wanted to attend a local council meeting but felt unable to do so due to it being held in a church, would have good reason to claim they had been discriminated against by the council.

Therefore, based on the reasons set out above, it is my advice to council in response to its query that it would be unwise and potentially unlawful under the Equalities Act 2010 to hold council meetings in the church.

This concludes my report to council.

Angie Hurren BEM
Broadclyst Parish Clerk & RFO.

31.10.2022