

BOROUGH GREEN PARISH COUNCIL

Clerk: Mr Bernie Galopin
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Established 1934

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Minutes of the **Part 2 Meeting** held in Borough Green Village Hall on Monday 5th July

074. **Exclusion of Public and Press:** Pursuant to Section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any item.

Chairman moved into Part 2, handed the meeting over to Cllr Crawley, and took no part in the debate.

Cllr Crawley and Simpson had responded to a request from the Chairman and Clerk to address their concerns about the apparent loss of confidentiality. An "Integrity Cell" was set up to continue negotiations within the £25k limit approved by the Council but ensure the discussions remained confidential.

Cllr Crawley circulated copies of the BDB Offer Letter (APX1) that detailed the role of a Parish Councillor who had given evidence to the Plaintiff blaming Cllr Taylor, alleging a history of such actions, and letters from Warners and the Clerk (Appx 2 & 3) detailing the financial implications.

Members were allowed time to read and digest the letters.


The Clerk asked members who had contacted BDB Pitmans, and Cllr Perry admitted it was him. The Clerk stopped Cllr Perry speaking at that point and incriminating himself any further.

Clerk asked for ratification of the £16k offer payment to BDB Pitmans on the 1st July
Prop Cllr Crawley, Sec Cllr Simpson, Chair Abstained, Cllr Perry against. **AGREED**

Chairman resumed, and tabled the remaining Part 2 matters:

1. There was a discussion about the possibility and feasibility of selling the piece of landlocked PC property at the rear of 4 properties on Lendon Rd. It was decided to write to the landowners to make the offer, but suggesting they engage a Chartered Surveyor preparatory to making offers for the land. Cllr Ramsden raised concerns that it might send the wrong message to the public as the PC acquired land to thwart developers. Chairman noted the plots were completely landlocked and of no use to anyone except those four residents
2. PTAB Local Plan report previously circulated. TMBC seem to be trying to circumvent the consultation process to bring BGGC forward without scrutiny - noted
3. Boundary Commission Review There are proposals to make Borough Green & Platt a 2 member ward, and move Shipbourne & Plaxtol elsewhere. TMBC are again insisting on secrecy, but Chairman will draft PC response and circulate
4. Chairman has spoken to several major operators, and has written pledges of £21k for the Rec Revamp project. £10k each from Southern Water and Robert Body, £1k from Hornet Estate. A further £20k has been promised by H+H and Roger Body, but not yet confirmed. This will be kept confidential until all pledges are confirmed, before publicity is generated

Chairman closed the meeting at 2205

 2-AUGUST 2021

APPENDIX 1 - BDB PITMAN PART 36 Offer to Settle 3rd June 2021

Dear Sirs

Without prejudice save as to costs

**Fiona Barton v Borough Green Parish Council and Francis Michael Taylor Claim No:
H00ME144
Offer to settle under Part 36**

We refer to the above matter in which we act for Fiona Barton (our client).

Our client is confident that she has a strong case against your clients, Borough Green Parish Council and Francis Michael Taylor, and is entitled to substantial damages, as set out in her particulars of claim. In particular we consider that, in attempting to defend this matter in the way that they have elected to, your clients run a serious risk of both a finding of misfeasance (which presumably would have far-reaching consequences for the Second Defendant and others on the Parish Council) and of aggravated

/ exemplary damages. It is perhaps telling that, since our instruction on this matter, we have been contacted directly by another Parish Councillor expressing their concern at the actions of Mr Taylor in respect of this matter, and encouraging that a claim of misfeasance in public office be pursued. We are aware of Mr Taylor's history in this regard and, since those matters are relevant to and undermine the assertions made in the Defence that the Second Defendant acted innocently and mistakenly, they will feature in our client's evidence in due course. We are in the process of finalising an application for strikeout and/or summary judgment.

Nevertheless, our client is mindful that under the Civil Procedure Rules litigants are expected to try to resolve their disputes whenever possible. We are, therefore, authorised to make your client, the following offer to settle under Part 36 (Offer).

This Offer is made pursuant to Part 36 of the Civil Procedure Rules, and it is intended to be a claimant's Part 36 offer. Accordingly, if your client accepts this Offer within 21 days (the relevant period), your client will be liable for our client's costs, in accordance with CPR 36.13

TERMS OF THE OFFER

Our client is willing to settle the whole of her claim in the matter referred to above on the following terms:

- Your client to pay our client, within 14 days of accepting this Offer, the sum of £16,000 (the settlement sum), by electronic transfer using the following details:

Full Name: BDB Pitmans LLP
Client STGSort code: 200000
Account no: 63201376
IBAN: GB98 BARC 2000 0063
2013 76SWIFTBIC:
BARCGB22
Ref: 106450.0009

- This Offer takes account of any counterclaims that your client may have against ours in this matter.
- The settlement sum does not include costs and, as mentioned above, your client will be liable to pay our client's costs on the standard basis, to be assessed if not agreed, up to the date of service of notice of acceptance if this Offer is accepted within the relevant period.

- The settlement sum is inclusive of interest until the relevant period has expired. Thereafter, interest at a rate of 8 % p.a. will be added.

FAILURE TO ACCEPT THIS OFFER

If your client does not accept this Offer, and our client obtains a judgment which is equal to or more advantageous than this Offer, our client intends to rely on CPR 36.17. In other words, our client will be seeking an order in the following terms:

- Your client to pay our client's costs up to the expiry of the relevant period.
- Your client to pay our client's costs on the indemnity basis from the date on which the relevant period expired, with interest on those costs of up to 10% above base rate and interest on the whole or part of any sum awarded at up to 10% above base rate for some or all of the period starting from the same date.
- An additional amount of 10% of the first £500,000 of damages awarded by the Court.

If you consider this offer to be in any way defective or non-compliant with Part 36, please let us know by return.

We look forward to hearing from you.

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Appendix 2 Warners letter 1st July 2021

Dear Parish Council Members

Fiona Barton -v- (1) Borough Green Parish Council (2) Francis Michael Taylor

I have been asked by the Chairman of Borough Green Parish Council to write to you all to explain a number of points following the discovery that a Borough Green Parish Councillor has given evidence to Fiona Barton and her solicitors BDB Pitmans in relation to the litigation brought against the Parish Council and Mike Taylor over the removal of Barton's hedge in July 2020.

I confirm that I have been a practising solicitor since 1991 and I specialise in property litigation, commercial and other general litigation, employment law and regulatory issues.

I have represented Borough Green Parish Council in this civil claim brought by Barton since I was instructed on 6 October 2020.

In my opinion, Barton has grossly inflated her claim. Even if the PC trespassed on Barton's land and acted unlawfully in removing her hedge, the trial judge (if the case had gone that far) would have only awarded her reasonable damages which would in my view have been the cost of planting whips and not the cost of installing a ready made hedge and watering system. On 7 December 2020 I sent a without prejudice letter to Barton's solicitors offering to pay for the costs of purchasing and planting replacement hawthorn whips and to regularly water the whips to see them through to maturity (the council having already erected a stockproof fence at a cost of £716.40). We also offered to contribute £1,500.00 towards Barton's legal costs – about 50% of her costs at the time. In my view, this was a sensible and reasonable offer and it is unlikely that Barton would have beaten that offer had she fought the case to trial. In my view it was entirely unreasonable for Barton to claim for the cost of a replacement "ready made" hedge and watering system – leaving her vastly better off in terms of hedging than she was before the removal of the hedge.

On 3 June 2021 Barton's solicitors sent a Part 36 settlement offer, offering to settle the case for £16,000.00 damages and costs. The way Part 36 offers work means that they did not have to specify at the time what their costs were but we knew from a previous costs estimate that their costs were likely to be in the region of £22,000.00. In their letter, Barton's solicitors told me that "since our instruction in this matter, we have been contacted directly by another Parish Councillor expressing their concern at the actions of Mr Taylor in respect of this matter and encouraging that a claim of misfeasance in public office be pursued".

There is no doubt in my view that the actions of this "mole" have significantly undermined the defence of the case. Although we do not know what the mole told Barton/Pitmans, there is no doubt that it was highly damaging and we can only assume that the mole was willing to give evidence at trial, against the Parish Council and Mike Taylor.

It seems to me that the mole's actions are in breach of the NALC Code of Conduct for Parish Councils, a version of which was amended and adopted by BGPC on 4 March 2013. Paragraph 1 of the "member obligations" states that "he/she shall behave in a way that a reasonable person would regard as respectful".

Paragraph 5 states that "he/she shall not disclose information which is confidential or where disclosure is prohibited by law". In my view there is no doubt whatever that the facts relating to the removal of the hedge in July 2020, which of course subsequently became the subject of court proceedings, were confidential, bearing in mind that the Parish Council was one of the defendants in this case.

There is no doubt in my view that the mole's behaviour has damaged the Parish Council's financial interests because it has resulted in the defendants in this case having to settle at a much higher level, both in terms of damages and costs than would otherwise have been the case and there is no doubt whatever that the mole's actions have encouraged Barton to pursue a level of damages and costs to which she should not have been entitled. There is no doubt also that it has increased the exposure of all Parish Council members not only to liability in Barton's trespass claim but liability in her claim against all Parish Council members for misfeasance in public office.

Yours sincerely
Michael McNally Warners

Clerk's estimate of increased costs to the Parish Council by email 4th July 2021, circulated as hardcopy

The estimated legal costs as at 30.06.21, based on our accounts and Michael McNally's letter/estimates are as follows:

BGPC
Estimated Costs: A25 Legal Dispute as at 30.06.21

	£	£
<u>Costs c/f 31.03.21 (net of VAT)</u>		
a. Warners fees	18,625	
b. Fence	540	
c. Fence extension	225	
<u>Warners fees Y/R 21/22 (net of VAT)</u>		
a. Inv 3003644	11,315	
b. Inv 3004630	<u>1,800</u>	32,505
Damages		16,000
Estimated Legal Costs payable to BDB		22,000
Estimated Costs as at 30.06.21		<u>70,505</u>

- Of the above, £30,705 has already been paid. Our balance payable is likely to be about £39,800.
- Warners will charge us for additional work in completion. This is likely to be about £2,000.

- NB: Costs payable to Warners to defend our case is £31,740 and likely to be about £33,750 on completion.
- NB2: Inv 3004630 is presented on the payments list for June 21. The £16,000 has been paid but will appear in the July bank reconciliation figures. It is included in the figure of £41,800 above.

Extra Costs Due to the mole

We can't, at this stage be precise, because we don't know the date that the mole got involved. This date would be identified from investigation. To an extent, it is also subjective because we believe that Barton inflated her claim.

As an exercise for this moment in time, we should define the extra costs as a range. Taking Michael's opinion and information into account, on 07/12/20 an offer of £716.40 plus £ 1,500 contribution to legal costs was made to Barton. This amounts to £2,216.40 (exc fence costs).

With this in mind, I can estimate the additional costs incurred due to the mole's involvement as being within the range of between £2,215 (rounding) to £70,505, approximately **£68,290**.

I suggest we share only headline figures at the meeting on Monday in the presence of the 'mole' (shown in **yellow**). Happy to discuss this point at our pre-meet on Monday at Mike's.

Regards

Bernie

