

LYME REGIS TOWN COUNCIL

MINUTES OF THE EXTRAORDINARY FULL COUNCIL MEETING HELD ON WEDNESDAY 25 JANUARY 2023

Present

Chairman: The Mayor, Cllr M. Ellis

Councillors: Cllr C. Aldridge, Cllr B. Bawden, Cllr R. Doney, Cllr B. Larcombe, Cllr P. May, Cllr C. Reynolds, Cllr D. Ruffle, Cllr D. Sarson, Cllr R. Smith, Cllr G. Stammers, Cllr G. Turner,

Officers: A. Mullins (support services manager), J. Wright (town clerk)

Absent: Cllr T. Webb

22/89/C Public Forum

J. Deary

J. Deary said he was a Lyme Regis resident and council tax payer. He said a lot had been said about the Oyster and Fish House seating, there had been a lot of conjecture about what was right and wrong and he wasn't clear about how things had proceeded. He said by the end of the evening, he would like to be clear there had been due process and clarity on how things had transpired. He said several years ago he went through a similar process as he wanted to install decking on his property in Hays Close. He said he talked to an official at Dorset Council and an indication was given that the plans would be acceptable but he would require planning permission. He said he didn't believe it required planning permission but it exceeded the height limit so planning permission was granted and the decking was certified. J. Deary said he would like to clarify due process had taken place throughout and he would be interested to hear what members said about what had or hadn't been said.

H. Britton (read out by an officer)

As chairperson of the Lyme Regis Society, H. Britton said Lyme Regis was fortunate to have the Langmoor Gardens, a beautiful outdoor space sold to the town in 1913. She said covenants in the conveyance restricted the use of the majority of the land to 'a garden or pleasure grounds for use by the public' and to only 'erect such buildings therein as shall be usual or necessary for such purposes'. She said under Covid restrictions, the government allowed restaurants to use extended outdoor seating on the highway for a charge of £100. She said in Lyme, several businesses were allowed to expand their outside space onto the highway as a temporary measure, which was then extended until the end of September 2022. H. Britton said Hix restaurant asked for permission to temporarily use an area of ground adjacent to its main building to extend their outdoor space and this was agreed by the town council. She said the new guidance on pavement licences allowed these temporary arrangements to be extended by authorities until September 2023. She said the Lyme

Regis Society supported this approach on the highway or where the town council owned land without any restrictive covenants. However, the society was concerned the council was discussing formalising the temporary wooden structure at Hix restaurant in Langmoor Gardens by considering commercially leasing the land to Hix. H. Britton said this would set a dangerous precedent in leasing or selling off parts of Langmoor Gardens for commercial benefit and would conflict with the covenants and intentions of the original conveyance in 1913. She said the society strongly objected to the proposal as the commercial exploitation of a town asset was unacceptable and should be refused. She said the society believed the gardens should be protected in perpetuity from any action that would damage the integrity of the public open space, the request should be refused and the wooden structure removed. H. Britton said the society had also objected to the planning application on the Dorset Council planning portal.

E. Robertson (read out by an officer)

E. Robertson said he was giving an opinion as a resident and someone who volunteered at the Lyme Regis Community Garden. He said he wanted to raise three issues with regards to the Oyster and Fish House seating: creepage, impact on the gardens and health and safety. He said creepage seemed the appropriate wording as the restaurant had grown from a garden workshop, then the addition of a balcony and now it was seeking permission for a permanent outside seating area. He wondered if the next request would be to erect a tent and asked if the owner would keep to the boundaries or just continue to expand and who would monitor this. E. Robertson said impact on the gardens had already taken place as rubbish and detritus was constantly being cleared away, for example beer bottles and napkins. Regarding health and safety, he said working in the gardens he could see there was a rodent population and he wouldn't like to see an outbreak in that area as it was next to amenity areas that might become infected and have to close due to leptospirosis. He said the gull population was a problem in the resort and the more food, the larger the potential problem. He asked if the restaurant would then require a tent to protect the customers. E. Robertson said Cobb Road was narrow and the access to the restaurant already caused issues during high season due to vehicles entering to access and drop off at the door, then backing out or doing a three-point turn with pedestrians trying to pass, and vehicles stopping at the entrance way on Cobb Road causing a dangerous pinch point. However, he said the other side of the issue was whether a thriving business should be stifled, as Lyme was a holiday resort and catering a valuable part of the town income. He felt clear and proper measures needed to be put into place to ensure there were limitations and obligations on the business, and to protect the public and reduce congestion on Cobb Road, especially during high season. E. Robertson said this could be monitored and a lease could contain unambiguous conditions and be renewed on a three-year basis. He said if the business did not comply, the council could revoke it or refuse its renewal.

22/90/C Apologies for Absence

None.

22/91/C Disclosable Pecuniary Interests

None.

22/92/C Dispensations

None.

22/93/C Outside Seating at The Oyster and Fish House

The town clerk explained the background to this issue, starting at the Strategy and Finance Committee meeting on 13 July 2022, which directed officers to determine a price for the outside seating through negotiation or valuation, followed by the refusal of the planning application by the Planning Committee on 4 October 2022. He said the valuation advice was now available.

The town clerk said the decisions made by both committees were legitimate but they were inconsistent with each other. He said a decision was needed either way on how the council intended to take this matter forward as it was important the Oyster and Fish House owner, Mark Hix, had a sense of what the position was. He said more importantly, if the council concluded the outside seating couldn't remain, it needed to give him an absolutely clear direction as it might be a difficult decision to implement and he didn't want to present two conflicting decisions to an outside party.

Cllr B. Bawden said at the Strategy and Finance Committee, there was no proposition, vote or majority view in favour of a continuing licence for the outside seating structure. She said although there was a request for a valuation, it did not imply consent, unless there were further discussions with other members outside council meetings. She said no council decision was made at that meeting so she felt it was a step too far for the town clerk to tell the Oyster and Fish House the council was 'amenable' to the proposal.

The town clerk said although it wasn't a resolution, it was absolutely clear what the council asked him to do; to get a valuation and to negotiate and to do this he had to have discussions with Mark Hix. He said the discussions were concluded by an external consultant.

Cllr B. Bawden said she believed the town clerk made a proposal at the meeting to enter into some kind of negotiation and members agreed as a way to move the discussion on, therefore no decision was reached.

The town clerk said it was the intention to bring the price back to the council and this was clear from the meeting. He asked why members would have asked him to get a valuation and to negotiate if they didn't want him to do it. He said the view was if the council could get the price right, members would be interested.

Cllr B. Bawden clarified that she wasn't disagreeing that the town clerk shouldn't have got valuations or negotiated, but he shouldn't have communicated to the Oyster and Fish House that the council was amenable to the proposal.

Cllr B. Larcombe said as no decision had been made by the Strategy and Finance Committee, the planning application was submitted without the council giving its consent as landowner but the application had to be considered by the Planning Committee on its merits, not led by money. He said the council had a request from the Oyster and Fish House for a temporary extension to an existing al fresco arrangement that would be packed away at night and would not require planning permission and this was what the council signed up to; however, what was actually there was more substantial and therefore in contravention to the government guidelines. He added that the council was now in a situation where there was a structure it hadn't given permission for, it did not have planning permission and it wasn't a temporary structure.

The mayor, Cllr M. Ellis said Mark Hix spoke at a virtual council meeting on 17 March 2021 and stated exactly what was proposed and it was voted on by the council.

Cllr B. Larcombe said the decision was based on the papers presented the meeting, not what was raised by Mark Hix in the public forum.

Cllr G. Turner said the Planning Committee looked at planning applications on their merits and the committee turned the application down, which was approved by the Full Council.

The town clerk clarified that the terms of reference for the Planning Committee, which were agreed every year by the council, stated that the committee makes its recommendations directly to Dorset Council. He said the Full Council did not approve the recommendations, it received the minutes only.

Cllr R. Doney said the fundamental question was if Mark Hix was to resubmit a planning application and was successful, would the council allow him to use the land. He said the issue of how much the council might charge and the conditions that might be imposed would come second.

Cllr R. Smith asked for more details about the covenant on the land since 1913, as raised by the Lyme Regis Society.

Cllr C. Reynolds said the covenant only applied to the Langmoor Gardens, not the Lister Gardens, so the letter from the Lyme Regis Society was factually incorrect. She said the land on which the structure was built hadn't been used for at least 75 years as it was on a slope and unusable. She said the decking also gave employment to local people.

The deputy town clerk said Cllr C. Reynolds was correct and that the covenant only referred to the Langmoor Gardens, whereas the Lister Gardens were purchased by compulsory purchase in 1964. He said there were some historic covenants that were not extinguished by the compulsory purchase order but they did not preclude the commercial use of the piece of land in question. He added this wasn't just his opinion as advice had been taken from the council's solicitor, who confirmed there was no legal bar on the decking being approved.

Cllr P. May said the council wanted to help and encourage local businesses where it could but it also had other duties, and during Covid it was right to embrace the government initiative to allow temporary outside seating, which came to an end in March 2023. He said he concurred with the general view of the Lyme Regis Society that commercial use of the gardens would set a dangerous precedent and they should be protected by the council from commercial development in perpetuity.

Cllr B. Larcombe said courts tended to look at what was reasonable in the absence of hard definition and he felt it was reasonable to conclude Langmoor and Lister were two parts of the same gardens. He said in people's minds, the gardens were a continuation from one side to the other and were seen as a whole.

The town clerk said although Cllr B. Larcombe might have a view about the gardens' covenant, there was a legal view and this was what the council had to properly consider. The town clerk he was surprised by the letter from the Lyme Regis Society because it had been made fully aware of the issues around the covenant. He said the council could refuse to give consent for various reasons but it had to be clear the covenant did not apply to the land in question.

Cllr C. Reynolds requested a recorded vote on the following motion:

Proposed by Cllr P. May and seconded by Cllr B. Larcombe, members **RESOLVED** to agree that the council recognises the unique importance of our gardens to the enjoyment of the town and our duty to protect them from commercial development; we therefore request that the temporary commercial measures permitted by Lyme Regis Town Council under government Covid restrictions are brought to an end and any temporary structures erected in the gardens are removed by the end of March 2023.

Voted for: Cllr G. Turner, Cllr R. Smith, Cllr B. Bawden, Cllr B. Larcombe, Cllr D. Sarson, Cllr C. Aldridge, Cllr P. May

Voted against: Cllr D. Ruffle, Cllr C. Reynolds, Cllr M. Ellis, Cllr R. Doney

Abstentions: Cllr G. Stammers

It was noted members also needed to discuss valuations for the existing Oyster and Fish House balcony and the car parking space, which would need to be discussed confidentially.

Proposed by Cllr B. Larcombe and seconded by Cllr D. Sarson, members **RESOLVED** that under Section 1, Paragraph 2 of The Public Bodies (Admission to Meetings) Act 1960, the press and public be excluded from the meeting for this item of business as it included confidential matters relating to relating to the financial or business affairs of any particular person within the meaning of paragraphs 1 and 8 of schedule 12A to the Local Government Act 1972 (see Section 1 and Part 1 of Schedule 1 to the Local Government (Access to Information) Act 1985), as amended by the Local Government (Access to Information) (Variation) Order 2006.

The deputy town clerk said he had used a recommended commercial valuer that operated in the south west to determine rents for the existing balcony and one of three parking spaces in the access road opposite the restaurant. He said as the

former business owner went into administration, an agreement needed to be entered into with the new legal entity and it needed to be backdated to the commencement of the new legal entity.

Cllr R. Doney left the meeting at 7.48pm.

In answer to members' questions, the deputy town clerk said the increased rent would also be backdated to the commencement of the lease, i.e. two years, the lease would be subject to review at three years, and the Oyster and Fish House could not make any changes to the balcony, such as increasing the number of covers or putting a roof on, without the consent of the council.

Proposed by Cllr R. Smith and seconded by Cllr M. Ellis, members **RESOLVED** to agree the revised rents for the balcony at the Oyster and Fish House and one parking space in the access road.

The meeting closed at 7.54pm.