

NOTICE OF SPECIAL MEETING OF HANNINGTON PARISH COUNCIL

TUESDAY 28TH FEBRUARY 5.00pm TO 6.00pm TO BE HELD AT THE VILLAGE HALL

REPAIRS TO BERTHA'S LANE FOOTPATH

Your attendance and contribution towards reaching a decision at this meeting would be greatly appreciated by the Parish Council. The issues under discussion are potentially contentious (should we/shouldn't we...) and, if agreed would be one of the largest items of expenditure in recent years... totalling £3,000 if you include committing the allocation of £2,000 from the Lengthsman Scheme for 2016/17 and 2017/18.

What is the issue/problem? (see below!!)

The proposal being considered is to proceed with filling the potholes and create a useable pedestrian surface.

However well meaning, the historical approach to repair of this footpath has been to request or allow the 'farmer' to fill-in the potholes with materials to hand which do not usually improve the surface or even possibly inhibit adequate drainage and cause flooding.

Why the Urgency for a decision?

The proposal being considered by the Parish Council is to access £1,000 value of the Lengthsman Scheme in BOTH this year and next ie total of £2,000. The deadline for a decision to proceed is Thursday 2nd March 2017. If a decision is not made at the meeting, the first stage of the work can NOT be undertaken and completed in the current year and THIS YEAR'S £1,000 RESOURCES from the Lengthsmans Scheme will be lost.

Whose responsibility is it to repair the footpath?

The responsibility for maintaining the BASE of a footpath is the landowners. However, efforts by both Hampshire County Council and Hannington Parish Council, including accessing Land Registry records, have failed to identify a landowner. Neither Basingstoke and Deane Borough Council nor Hampshire County Council will accept responsibility for the repairs.

Why is Hannington Parish Council getting involved?

The footpath in question, which runs alongside Michaels Field, is a key part of the network of footpaths in the Parish. It is 'central' to the village and has in the past

therefore been accessed by Hannington residents as well as ramblers and cyclists. **Once identified as a potential 'health and safety' risk, it has been argued that HPC has a general 'duty of care' to the public and to its residents.**

Can Hannington Parish Council get involved?

Yes, it can. Under the Highways Act 1980.

43. Power of parish and community councils to maintain footpaths and bridleways.

(1)The council of a parish ... may undertake the maintenance of any footpath or bridleway within the parish ... which is, in either case, a highway maintainable at the public expense; ...

50. Maintenance of privately maintainable footpaths and bridleways.

(2)The council of a... parish ... may undertake by virtue of this subsection the maintenance of any footpath or bridleway within the ... parish... whether or not any other person is under a duty to maintain the footpath or bridleway; but nothing in this subsection affects the duty of any other person to maintain any such footpath or bridleway.

What is to be done?

The option being considered by the Parish Council is for repairs to be carried out in two phases by the Lengthsman:-

Phase 1: Stage 1. *Site repair preparation*, in this financial year 2016/17 in March. Scrape away the surface mud and detritus, fill-in the potholes to the surface of the track using 80 tonnes of hard core material. **Work to commence in this financial year.**

Phase 1: Stage 2. *Laying in hard core*, post end of financial year i.e. 2017/18 say in **April/May.**

Phase 2: Lay 40 tonnes of Road Planings at 5 ft. (1.5m) width across the length of the track.

A decision to proceed with Phase 1 does NOT include a decision whether or not to proceed with Phase 2. The decision on Phase 2 can take place later.

What is the cost?

The overall cost of Phase 1 is approximately £3,000. Initially the Parish Council liaised with HCC Countryside Team and submitted an application for £2,000 from their Small Grants Scheme, **leaving the Parish Council with a residual cash payment of £1,000.** The application for SGS funding was REFUSED. The grounds given by HCC were:-

"The Panel welcomed your interest in countryside access, however the application was not considered suitable for funding because the surface of the footpath is currently suitable for walkers. [Clerk: This was thought by the Parish Council to be a surprising conclusion given the photographic evidence that was provided to support the application]

The Panel have suggested that those using the track for access (not on foot) should contribute towards the cost of repair. [earlier email correspondence re the refusal included 'informal' guidance ...

"I believe this refers to the farm vehicles that are using the track and potentially causing damage to the surface."

Since the refusal of SGS funding was received, the Parish Council have sought an alternative funding option of accessing resources from the Lengthsman Scheme, sponsored by HCC. The aggregate cash payment of £930 that would fall to be met by Parish Council for this option is very similar to the £1,000 previously anticipated if access to the Small grant Scheme had been successful.

Phase 1 Stage 1; cost £1,570 LESS £1,000 funded by Lengthsman Scheme (2016/17)... **residual payment by HPC £570.**

Phase 1 Stage 2; cost £1,360 LESS £1,000 funded by Lengthsman Scheme (2017/18)... **residual payment by HPC £360.**

Total residual cash payment by Parish Council £930.

What are outstanding issues?

The Parish Council that met on Tuesday 21st February discussed the above at great length, deciding to defer a decision pending:-

1. third parties/users being contacted to see if they will contribute towards the costs, and,

2, establish if, by undertaking repairs to the footpath, the Parish Council may lay itself open to claims for injury/damages etc, and if so, whether or not such claims are covered by its insurance.

I have attached a copy of the DRAFT Minutes from Tuesday's meeting that addressed this particular agenda item. Should residents wish to have a copy of the very detailed Report that was considered by Cllrs at the meeting (previously circulated by Barbaramail on behalf of the Parish Council), please contact me via email at chrispottinger@live.co.uk.

Chris Pottinger,

Clerk, Hannington Parish Council

23rd February 2017

DRAFT MINUTE

Repair to Footpath FP7106a: Bertha's Lane

The Minutes for this item are in far greater detail than usual as much of the background information, on which the Parish Council's decision was made, occurred within the last month/ weeks/days of the meeting, and in one case AFTER the Agenda Report was circulated to the public in advance of the Council. The background information is presented in chronological order.

13th December 2016:

The Parish Council meeting 13th December considered this issue in detail, reaching the following conclusions and agreeing the following actions:

"CONCLUSION: At this time, there is no identified owner of the pathway and hedgerow, and therefore nobody can be identified as having responsibility for its maintenance nor having liability for any potential damage to health and property.

CONCLUSION: The Parish Council has the power to maintain the footpath should it choose to do so... but, in the absence of an identified landowner and with neither the HCC nor BC accepting any responsibility, does the Parish Council have a Duty of Care to mitigate as far as reasonably possible risks to the public and premises within its parish? It would be prudent to make some financial provision in the 2017/18 Budget for any costs that would be incurred should the Parish Council subsequently decide to accept it has a 'duty of care' and that repair and maintenance is essential.

ACTION: Clerk to include a financial provision in the Budget 2017/18

10th January 2017:

Initial indications from HCC Countryside Team, previously reported to the Parish Council in December 2017, were that an SGS could not be awarded unless the applicant had the owner's permission, which was a problem as no owner could be traced. However, following further investigation by the HCC Countryside Team, the Parish Council was informed by email on 10th January that:

"Further to our telephone conversation yesterday I include below the response received from our legal department with regard to your powers as a Parish Council to carry out works upon a Right of Way where you are unable to locate a Landowner.

As a result I am happy for you to proceed with an application to the Small Grants Scheme for repairs to the surface."

Source: Emma Broadbent, Countryside Access Ranger (Community Engagement) email dated 10th January '17

14th January 2017:

In response to the above decision of HCC Countryside Team that an application for SGS funding was applicable, the Clerk sent an email on 14th January, on behalf of the Parish Council which included: an extract is reproduced below.

" It is understood that with HCC SGS monies, this would provide an overall materials budget of £2,000 (plus VAT). The Parish Council understands this amount would be sufficient to purchase a volume of suitable materials that would be sufficient to repair the pot-holes, as reasonably as practical. The outcome would be to provide public, who are less mobile, the ability to negotiate a route to the bridleway beyond."

16th January 2017:

Contents of email from Clerk to Cllr Jan Hertz so that an application for SGS Funding could be submitted, with the legal authority and limited ongoing liability being covered as follows:

"Authority for the Parish Council to incur the expenditure is provided by the Highways Act 1980 paragraph 50 subsection (2) which states,

The council of a... parish ... may undertake by virtue of this subsection the maintenance of any footpath or bridleway within the ... parish... whether or not any other person is under a duty to maintain the footpath or bridleway; but nothing in this subsection affects the duty of any other person to maintain any such footpath or bridleway."

"Whilst every effort has been made to trace an owner of the land, none has been found to date. ...the Parish Council is not accepting responsibility, nor setting a precedent [by undertaking any repairs now], for future and ongoing maintenance and repair of this footpath, but is merely exercising its power, under the above Act, to do so at this time".

18th January 2017:

This letter from the Parish Council was then followed up and supported by a formal application for Small Grant Scheme funding on 18th January.

9th February 2017:

"Unfortunately the application was turned down by the panel."

They had the following comments:

- *Who is using the track should contribute to repairs to surface*
- *Access by foot is currently good without repairs.*

With regard to the first comment- I believe this refers to the farm vehicles that are using the track and potentially causing damage to the surface."

Emma Broadbent, Countryside Access Ranger (Community Engagement).

16th February 2017:

Cllr Hertz reported back on an alternative way in which the £2,000 external funding, that was no longer available from the SGS, could be obtained from the Lengthsman Scheme.

His report "seeks an 'in principle' agreement from the Parish Council to proceed with the repair of Berthas Lane. It proposes that we [HPC] proceed with filling the potholes to create a useable pedestrian surface for the community by use of the available funds from the Lengthsman Scheme and the current HPC reserve of £1,000 by,

- Filling the potholes across the track with hard core aggregate to the level of the surface according to HCC Countryside Services recommendations.
- Apply a Road Planings surface to 5ft (1.5m) rather than the 3 metres (10ft) width of the footpath. This is sufficient to allow two prams to pass each other."

20th February 2017

Having obtained confirmation of the appropriateness from HCC Highways, the Head of HCC Countryside Services and Pamber Parish Council that the proposal to use the Lengthsman Scheme funds for the Berthas Lane repair work is appropriate, and that it does not contradict the 'spirit' of the Lengthsman Agreement, Cllr Hertz circulated an update that included a detailed costed statement confirmed by the Lengthsman at the weekend.

The Pamber Parish Clerk has also confirmed that small amounts of the allocated Lengthsman funds can be carried over to the following year for specific works. Otherwise, any remaining large amounts of unused funds are returned to the HCC. Hannington Parish Council currently has access to £1,000 of Lengthsman funds for this financial year, i.e. to end March.

The proposal put before the Parish Council was for Phase I "laying in the hard core after the mud clearance work and rolling it in will give our parishioners a useable surface without the floodwater" to be undertaken in 2 Stages.

Stage 1 – Preparation work undertaken before 31st March 2017 would cost £1,570, of which £1,000 would be met from the Lengthsman Scheme and the balance of £570 charged to HPC.

Stage 2 – Laying in Work undertaken in April/May 2017 would cost £1,360 of which £1,000 would be met from the Lengthsman Scheme and the balance of £360 charged to HPC.

Total cost to Hannington Parish £930, which is within the £1,000 that was agreed previously 'in principle' subject to SGS funding (£2,000) being available.

CONCLUSION:

The Council agrees that the current state of the footpath is unsatisfactory.

The Council agreed by email 13th January 'in principle' to earmark up to £1,000 towards the cost of the scheme... subject to:-

- SGS funding [£2,000] being made available, and
- receipt of further detailed information on the proposed scheme from Cllr Hertz.

The SGS Funding has since been refused. A key reason given was "*Who is using the track should contribute to repairs to surface*". This concern by HCC held great weight at the Parish Council meeting. Not least that the Parish Council could undertake the repair work, as being proposed, only for vehicles to continue to use the footpath, cause damage, and the Council to feel morally obliged to then continue with cost of upkeep of the footpath.

The Council concluded that it was therefore not appropriate that the costs should fall entirely on the Parish Council, when 'third parties' are causing the damage. This is particularly the case when the Parish Council does not own the land nor have any legal responsibility to undertake the repair... though it does have the power to do so if it chooses.

The Council meeting agreed that "*with his customary energy and resourcefulness Jan has come up with an excellent alternative scheme to the SGS grant*", however the **DECISION should be deferred... pending:-**

- third parties/users being contacted to see if they will contribute towards the costs, (Cllr Hertz), and**
- to establish if, by undertaking repairs to the footpath, the Parish Council may lay itself open to claims for injury/damages etc, and if so, whether or not such claims are covered by its insurance (Clerk).**

Cllr Hertz is to advise the Council what is the latest date a DECISION can be made such that the work for Stage 1 could still be completed in the current financial year and the £1,000 funding (2016/17) from the Lengthsman Scheme be accessed?