

## **Draft Minutes of Llangors Community Council Extra Meeting**

**Held on Thursday 22<sup>nd</sup> August 2019, 7.00pm at Llangors Youth & Community Centre**

### **Present**

Cllr Mr C Preece (Chair), Cllr Mr A Evans, Cllr Mr D James, Cllr Mr M Scruby,  
Cllr Mrs L Griffin, Cllr Mr R East, Cllr Mrs C Owen, Cllr Ven. A Jevons, Judith Phillips (Clerk)

Members of the public: C. Edwards, R. Clarke, P. Exton, A. Exton, M. East, R. Mills,  
A. Dunne, L. Duffy, K. Duffy, T. Corbett (also a Governor at Llangors CIW school)

The Chair welcomed everyone to the meeting.

- 1. Apologies for absence:** Cllr Mr S Bailey, Cllr Mr D Jones
- 2. Declarations of Interest for agenda items as per Members' Code of Conduct:** None
- 3. Community Use of Llangors Playing Field. In consideration of the site remaining closed for public use: -**
  - a) consider a statement issued by Llangors School Governing Body on 5/8/19**
  - b) update to be given on urgent actions taken since the last LCC meeting on 10/7/19**
  - c) consider the legal position between the CC and PCC regarding community access to the field, action taken and discuss any requirements for further action to be taken.**

The Chair informed the meeting of the closure and removal of the play equipment at Llangors Y&C Centre. Concerns had been highlighted as a result of the ROSPA inspection on 25<sup>th</sup> June. Daily assessments thereafter had resulted in a consultation with the insurance company and PCC Outdoor Recreation Officer which concluded in the closure of the site on 16<sup>th</sup> July.

Fundraising for replacement equipment for the village is well underway with the hope it will be located the other side of the community centre on the area of land that the centre committee are hoping to lease from PCC. Melrose East, as chair of Llangors Youth & Community Centre, is dealing with that matter and was asked to update the meeting with the current situation with this land. The 25 year lease was still awaited from PCC and, due to the equipment being condemned and the school playing field apparently remaining closed, there was a more urgent need to be able to use this land. As a consequence, she had contacted David Pritchard (PCC Estates Officer) in the first week of July, who had indicated that a licence could be swiftly issued by the Council's Legal Services Department to allow access and that they would cut the grass, thereby allowing for its use for recreational purposes during at least some of the school summer holiday period. None of the required actions by PCC have happened. The Clerk to the Community Council had looked into the grass cutting matter at the site, but to no avail. It was felt that the matter was no further forward with PCC now than a year previous, which was frustrating.

Melrose was thanked for the update.

The Chair then updated the meeting on communication between Llangors School Governing Body and Cllr Griffin, CC representative on that body. On 17<sup>th</sup> July, following a number of residents contacting the CC with concerns for the holiday period and no recreation area available in the village, Cllr Griffin contacted the governing body about community use of the playing field. This was followed by a meeting she had with the headteacher and the vice chair of governors on 19/7/19, whereby the possibility of a pilot scheme for the summer was proposed by the headteacher, subject to approval by the governing body. It was made clear by the headteacher that any possible use of the field would require a system of 'booking in

advance', which would also be subject to a number of conditions. (See Appendix 1), one of which was "the need for a responsible person to be in attendance throughout the time of that booking".

Subsequently, however, the governing body revoked any form of public use of the playing field during the vacation period, with the Chair of Governors issuing a statement on 5/8/19 invoking two reasons for this decision. First, reference was made to the governing body drawing up a policy on regulated public use and "[the policy has not yet been ratified by the Governing Body, as it has not been approved by Powys Legal department, and until it has been approved by Powys, the governors are unable to allow use of the field". Secondly, "The school field is [being] used by [a] holiday club throughout the summer holidays from 8.00am until 6.00pm each week day. There can be no other use of the field during these times." (See Appendix 2).

The Chair of Governors' statement was read out at the meeting, leading to observations by a number of the members of the public present that no holiday club had been held at the site throughout the summer holiday period.

Tom Corbett spoke and informed the meeting that he was a governor at the school, albeit that he was not formally representing the group at this meeting. He confirmed that the governors did want to see this matter resolved, and that he understood the frustration evident and that emotions were clearly running high.

Cllr Jevons arrived at 7.20pm.

In view of the statement from the governing body on 5/8/19, Cllr East explained the legal position between the CC and PCC. He read out and explained the information obtained. (See Appendix 3). In summary, in April 1967 Brecknock Borough Council purchased land to build a new school. In 1968 they met with Llangorse Parish Council and agreed that the entire area acquired by the Education Committee could be used for playing purposes by the children in the locality. This having resulted in unregulated use for over 50 years resulting in a substantive legitimate expectation for continued unregulated use. On this basis it was felt that the governing body cannot deny public access and in doing so it appears they are acting unlawfully.

An open discussion took place with reference made to a number of meetings in recent years involving representatives of both the governing body and the CC and, on some occasions, Llangors Y&C Centre, with the following points highlighted:

- Dismay was expressed that the governing body had pulled out of such meetings and had not progressed the Play Wales Toolkit in order to continue open public access of the site.
- A CC public meeting a number of years ago had assessed play facilities in the community and the barriers that are put in front of children to prevent access to facilities. Another meeting in May 2018 had attracted a large turnout of residents who had expressed serious concerns about the action of the governing body in seeking to prevent long established open access. School governors had been present at both meetings and it appeared had not reviewed the opinions of the public and addressed the concerns raised.
- Members of the public expressed the great need for children to play with friends in an unstructured environment, enabling the development of different friendship groups, learning new skills, keeping fit and having fun independently and unsupervised in as safe an environment as possible and on a responsive basis, not booked in advance.
- Words of local children asked about the situation were read out.

- Adults also need recreation space.
- Llangors Y&C Centre had supported PCC and the school in allowing the car parking spaces at their site to be included in the total number of the school's parking spaces. Without this, the school's planning application would have been in breach of the minimum requirements required to obtain planning permission.
- Examples of other schools that allow community use were given and how children are encouraged to manage that use within the school environment by litter picking etc.
- It was noted that the Y&C Centre own the access to the field gate and has an easement across the land to access drains so it was felt that a key to the gate should be supplied to them.
- Members of the public had contacted the school about using the field and had not received a response
- Llangors Y&C Centre had been grateful for the use of the site for their fete. However, in signing a hire agreement at the school, its representative had not been allowed to have a copy of the document as it was deemed confidential. This made it impossible to identify, let alone comply with, its terms and conditions. when executing the event.
- Over 50 years there has been very little damage to the site and any had been low in monetary value. Past governors present shared their experience on how such matters had been handled, with successful outcomes. No one supports any damage and, should it occur then communication must take place between all parties to resolve matters.
- Play Wales and Welsh Government guidance to schools on community access was referred to by Cllr Griffin and Tom Corbett was asked to read it.

Tom Corbett, expressed personal concern for the situation, explained that he wanted to see some positive dialogue and a resolution to the matter, in such a way that suited all parties involved, and would be taking the issue to the next governing body meeting. He was happy to be contacted by any person wishing to discuss the matter.

Cllr Preece brought the open discussion to an end and asked CC members how they wanted the matter to be taken forward. Information on the legal status of the site use/closure that Cllr East had obtained had been passed to the legal department at PCC as urgent. The detail was approved. It was agreed to deal with the matter via County Cllr Durrant and await a response. It was also agreed that if necessary, the details could be sent to the local MP and AM and any other relevant bodies.

The chair thanked members of the public for attending the meeting.

The meeting paused at 8.19pm while members of the public left the building and recommenced at 8.23p.m. Cllr Owen left the meeting to attend another appointment.

**4. Consider further communication received regarding a complaint.**

***The public and press will be excluded from this section of the meeting as per the Council's Standing Order 3d to protect confidential information in the complaint.***

The open meeting resumed at 8.47pm

**5. Any matters of an urgent nature that cannot wait until the next scheduled meeting on 10/9/19. - None**

**6. Confirm date and venue of the next bi monthly meeting 10/9/19.**

It was agreed to be held at Pennorth Chapel. (Action Clerk).

There being no other business the meeting closed at 8.49pm

## **Appendix 1 - LCC statement as of 19/7/19**

### **Community use of Llangors School Playing Field**

*The Community Council has been in discussion with the Governing Body of Llangors School for some time about the use of the playing field, by members of the community, outside of school hours. With the recent closure of the play area at Llangors Youth & Community Centre and the annual school summer holidays upon us, the Community Council representative on Llangors School Governing Body has today met with the Headteacher and Vice Chair of the School Governing Body to clarify the current position. We are verbally advised by them as follows: -*

*There is an organised holiday club and works being undertaken at the school during the holiday period so the field will be unavailable between the hours of 8.00am and 6.00pm Monday to Friday.*

*The Governing Body of the school has developed a policy and lettings procedure for the hire/use of the field. These documents are currently in draft form and need to be checked by Powys County Council and ratified by the Governing Body before they can be implemented.*

*In the meantime, the Headteacher is happy to consider a pilot scheme, subject to agreement by the Governing Body, where a letting is made to a responsible person/group outside the above times, which will allow access to the field. Parameters would need to be set and everything would have to be the same for each subsequent booking.*

*The Community Council has not seen the proposed letting policy, however if a pilot scheme is ratified by the Governing Body in the next few days, it is understood from today's discussion that the field may be hired by contacting the Headteacher direct by email at [head@llangorse.sch.gov.uk](mailto:head@llangorse.sch.gov.uk)*

*Conditions of the letting would be:*

- i) the need for a responsible person to be in attendance throughout the time of that booking.*
- ii) clarity as to whether the booking would allow access to anyone to use the space or whether would it be for identified people only. If the booking was for anyone, then it would need to be made clear who would be responsible for these individuals, especially if any damage should occur.*
- iii) there would be no charge for any bookings made by a community group who are not charging for entry.*

*Use of the school field without a booking and agreed letting will be considered as 'trespassing'.*

*The site is owned by Powys County Council with the management of it delegated to the Governing Body of the school. Any booking queries/questions about availability need to be directed to the Headteacher at the email address above.*

*Whilst the Community Council are grateful to the Governing Body for potentially allowing use of the field at this time, it will continue to request for the return of the previous open access that the community enjoyed for many years.*

*19<sup>th</sup> July 2019.*

*Judith Phillips, Clerk to Llangors Community Council.*

## **Appendix 2 - Llangors School Governors Statement 5/8/19**

*Llangors School Field. Summer 2019.*

*The school field is used by the holiday club throughout the summer holidays from 8.00am until 6.00pm each week day. There can be no other use of the field during these times.*

*A letting Policy is being drafted by the Governing Body for supervised use of the field by the local community. The field will be available to be booked in advance for all times that it is not in use by either the school, the after school club, the holiday club; or any other organised event.*

*The policy has not yet been ratified by the Governing Body, as it has not been approved by Powys Legal department, and until it has been approved by Powys, the governors are unable to allow use of the field.*

*There are still health and safety issues to be resolved concerning the field.*

*The governors hope that these problems will be resolved early next term, and that the local community will then be able to use, and enjoy the field in safety.*

*Kate Weston*

*Chair of Governors Llangors Church in Wales School*

## **Appendix 3 - LCC note on the Legality of Llangors primary school lease agreement – additional evidence 16/8/19**

### **COMMUNITY USE OF THE PLAY AREA AT LLANGORS SCHOOL**

This statement outlines the legal position in relation to community use of the play area at Llangors School. In this respect, it is important to note that the land in question was purchased in April 1967 by Brecknock Borough Council, from local farmer Thomas Jones, being earmarked for a new village school, which was subsequently built circa 1971-3. However, from its purchase, the land was used by local children as a playing area. This led to representations by Llangorse Parish Council, resulting in a site meeting on 25 July 1968, between representatives of the two councils, where such use was agreed. This was confirmed in a letter sent by Deniol Williams (Director of Education, Brecknock Borough Council), dated 26 July 1968, to Cuthbert Lloyd (Clerk to Llangorse Parish Council) which expressly states that:

*“With reference to the site meeting held yesterday with representatives of your Council and Officers of this Authority, I write to confirm...[that] the entire area acquired by the Education Committee can be used for playing purposes by the children of the locality.”*

Such unregulated use has taken place since then, with evidence available from a wide variety of individuals confirming that this has been the case in the period of over 50 years since this agreement. It is understood, however, that the Governing Body of Llangors School

is now seeking to prevent such use, having drafted a document on use of the play area that denies unregulated public use. It is, therefore, important to point out this attempt to deny such use is unlawful, as explained below.

The aforementioned letter of 26 July 1968, by a senior officer of the (then) local authority, contains a clear and unconditional statement granting public use and, as such the strength of the undertaking by the public authority (i.e. Brecknock Borough Council) is “clear, unambiguous and devoid of any qualification” (per Lord Bingham in *R v Inland Revenue Commissioners, ex parte MFK Underwriting Agencies Ltd* [1990] 1 WLR 154). This decision led directly to continued public use of the play area for recreational purposes over a long period and, as such, has created a *legitimate expectation* which cannot now be ignored or revoked.

To reiterate, the above facts show that a *substantive legitimate expectation* has been created arising from a clear official representation by a senior officer of the relevant public authority that clearly entitles unregulated public use, for recreational purposes, of the school play area. There is substantial caselaw in respect of this common law entitlement e.g. *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213, *R v Secretary of State for the Home Department, ex parte Asif Mahmood Khan* [1985] 1 All ER 40, *R v (Abbassi) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598; [2003] UKHRR 76.

This means that the Governing Body of the School cannot deny public access, as it apparently is now seeking to do. In fact, what it is legally required to do is to take steps to ensure that the play area continues to be made available for public use in order to meet this legitimate expectation.

It is also important to note that the current attempt by the Governing Body to prevent unregulated public use is also unlawful on the ground of *procedural legitimate expectation* for at least two reasons. First, as the original decision in 1968 was made by a senior officer of the predecessor local authority to Powys County Council, any reconsideration of such a long and well established interest would need to be made at the same level. For the Governing Body to seek to make any decision on this (particularly in respect of its proposed revocation) would constitute unlawful delegation of decision making (see *Barnard v National Dock Labour Board* [1953] 1 All ER 1113).

Secondly, any attempt to introduce changes to public use requires consultation with community bodies, most obviously Llangors Community Council (as successor body to Llangorse Parish Council) (see *R v Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299. *Council of Civil service Unions v Minister for the Civil service* [1985] 1 AC 374). There has been no such consultation.