

**Minutes of the bi-monthly meeting  
of Severn Stoke & Croome d'Abitot Parish Council  
Wednesday 28<sup>th</sup> September 2022 at 7.30pm  
At SOQ Room, Croome Court, Severn Stoke**

**Present:** Parish Cllr Freeman (Chair), Parish Cllrs Faulkner, Garrard, Halling, Preston and Williams.

**In Attendance:** Mrs L Stevens (Clerk and RFO).  
District Cllr David Harrison, District Cllr John Michael, Members of Kempsey Parish Council (SB, TG, NS), SS (Lengthsman), MF (National Trust), J&MG members of public.

**Apologies:** Parish Cllrs Rowe and Seward, County Cllr Martin Allen, JH (St Denys' Churchwarden), RM, LH and RH (Parish Hall Committee).

**Notes post meeting:** *At the extra-ordinary meeting of this parish council on 10<sup>th</sup> October 2022, 7.30pm, under item 2a) Cllrs received and accepted advice from Worcestershire County Association of Local Councils (WCALC) and National Association of Local Councils (NALC) regarding the legal position of a number of the motions made below. Prps: RH. Scnd: LF. Under item 2b) of the meeting 10<sup>th</sup> Oct, Cllrs reviewed and accepted a number of vital legal advisory recommendations, including those pertinent to health and safety, with regard to actions and motions voted upon on 28<sup>th</sup> September 2022 at full parish council and approved inclusion of relevant information in these minutes. Prps: RG. Scnd: RH. Nb. Notes in purple appear in those parts of these minutes where updated legal advice from the 10<sup>th</sup> Oct affects the decisions made in the meeting of 18<sup>th</sup> Sept.*

**All present stood for a moment of reflection to remember Her Majesty Queen Elizabeth II.  
No questions at public open forum.**

**1&2** **Declarations and points of order.** Cllrs noted four existing vacancies on the parish council all of which have been advertised and are now available for immediate co-option

**3** **Minutes** – to consider the approval of the minutes of the meeting held on  
a. 20th July 2022. Prps: RH. Scnd: PP. Duly approved.  
b. 31st August 2022 (extra-ordinary meeting). Prps: SF. Scnd: RW. Duly approved.  
Outstanding actions were reissued.

**4** **Councillors' Reports**

a **Cllr Allen.** Cllr Allen's report had previously been distributed and key points were conveyed to those attending. Most items are covered later by this agenda. Cllr Allen has managed to confirm funding to keep this service going until Christmas, and urges residents to use it. With the current funding provided by WCC to keep the commercial buses running until the end of March 2023 and no current plan for what will happen after that, Community Transport may become even more vital from April 2023.

b **DCllr Harrison / DCllr Michael.** Update was provided on recent works to the Ketch and Upton roundabouts and to the Southern Link Road, with some teething problems remaining to be sorted. Parking enforcement has commenced at Croome Corner, London Arch, with few incidences of inconsiderate parking being observed. The Clerk to write to ask that enforcement continue in order to understand the pattern of problems. Regarding the flood bund, soil remains stacked at Powick waiting to be moved. Machinery was delivered last week and the remaining crops of sugar beet await harvesting. Cllrs hope that the Environment Agency (EA) will sign off the soil to Regulatory Services asap. The Clerk was **instructed** to write to the EA to ask for a further update. DCllr Michael expressed his pleasure at the honour of reading the declaration of the Accession of King Charles III.

Clerk

Clerk

**5** **Flood Bund.**

i **Update on bund constructions or Environment Agency plans where available.** Already covered.

ii **Severn Stoke Flood Evacuation Plan. To consider outstanding parish council actions. Including an option for new noticeboard in order to display Evacuation Plan and emergency updates.**

Upon a suggestion submitted in advance from Cllr Seward, the Clerk was **instructed** to explore options for a new noticeboard to be placed near the existing one on Birch Lane, rather than in an area subject to flooding. Prps: RW. Scnd: PP. Clerk to obtain permission from Highways and to obtain quotes.

Clerk

Clerk

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*Standing orders were suspended in order that the public be able to participate in discussions for the next item. Prps: PP. Scnd: RG*

**6 Parish Hall**

**i** Cllr Freeman gave an introduction and worked through actions from the meeting of 31<sup>st</sup> August:  
**31<sup>st</sup> August Agreed Action:** *Parish Hall Committee to pass the feasibility study plans to A.Smith at MHDC to ask for opinion.* Cllr Freeman confirmed that this had been actioned by the Hall Committee.

**31<sup>st</sup> August Agreed Action:** *Parish Hall Committee to install an extra layer of fencing around the parish hall, to deter those willing to use the considerable amount of force that would be required to break in.* Cllr Freeman confirmed that additional fencing begins to be installed by the Hall Committee. Cllrs asked this work be completed asap as a matter of public safety.

**31<sup>st</sup> August Agreed Action:** *Parish Council to arrange meeting with landlord agent and seek clarification in writing regarding possibilities of lease and other options for sites.* Cllr Freeman confirmed that this had been done by the Parish Clerk.

**31<sup>st</sup> August Agreed Action:** *Parish Cllrs to attend Parish Hall Committee AGM to give support.* Cllr Freeman confirmed that Cllrs and the Clerk attended and assisted the Hall Committee in answering questions from the public.

**31<sup>st</sup> August Agreed Action:** *Parish Council to table all options as discussed above at the next parish council meeting in September and begin to clarify options for referendum/survey.* (nb. This item on the agenda)

Hall  
Comm

The following items were brought to the parish councillors' attention and debated:

**6ii Pre-App.** 3<sup>rd</sup> week in September, the Hall Committee approached the parish council asking for agreement that the Parish Council and Chair be named on the pre-application document, as parish councils are exempt from pre-application costs. The parish council delayed making a decision on this pending: 1) confirmation about the matter of costs, 2) confirmation on whether submission of the pre-app would also commit the parish council to submit any subsequent formal planning application, 3) receipt by the parish council of the feasibility documents to be used for purposes of pre-app, 4) public debate of submission of a planning app (pre-application) by the parish council. Parish Councillors confirmed that they should always be permitted sufficient time to clarify outstanding situations or queries and confirmed that no deadline had been set on the Hall Committee for submission of the pre-app. The parish hall committee submitted the pre-app to MHDC on 26<sup>th</sup> September 2022.

**Note post meeting.** *At the extra-ordinary meeting of this parish council on 10<sup>th</sup> October 2022, 7.30pm, Cllrs received and accepted advice from NALC that as custodian trustees (for NALC definition see appendix 3) it would not be appropriate for the parish council to be named on the pre-application or formal planning application relating to the parish hall. Motion for acceptance of this advice. Prps: RG. Scnd: LF.*

**6iii Lease.** During correspondence, the Clerk has established that Savills (via B.Knight) are only prepared to renew (either on the existing or on alternative sites) on the same terms as before (i.e., maximum of 25 years) subject to review of detail such as rent etc. The District Councillors expressed concern that the serious matter of the difficulties with extending the lease beyond 25 years had not been brought to their attention – resulting in their advising that pre-application advice was appropriate at this stage. DCllr Harrison confirmed that in his opinion a 100-year lease would be required for planning permission to be granted. Clerk to double check requirements.

Clerk

**Motion:** As leaseholders and a legal entity the parish council will not obstruct the Parish Hall Committee from discussing options for the lease beyond 25years, that the Parish Council must be included in those discussions and that the Parish Council will continue to pay the lease for the remaining term. Prps: RG. Scnd. SF. No dissenters or objections. Unanimous carried. **Note post meeting.** *Upon legal advice relating to role of Custodian Trustee, minor, non-fundamental amendments to wording proposed 10<sup>th</sup> October 2022 and accepted. Prps: RH. Scnd: RG*

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**Action.** The Clerk was **instructed** to confirm to the Parish Hall Committee that it had no objection to the Parish Hall Committee continuing to approach Savills regarding a lease extension, provided that the parish council is involved in these discussions. However, the parish council reserves the right to continue to approach Savills with regard to the matter of the lease and in order to clarify matters essential to future parish council decisions. *Note post meeting. Upon legal advice relating to role of Custodian Trustee, minor, non-fundamental amendments to wording of Action proposed 10<sup>th</sup> October 2022 and accepted. Prps: RH. Scnd: RG* Clerk

**Action.** Cllr Preston requested and Cllrs **agreed** that further legal advice should be sought in relation to the parish council's position as Custodian Trustees in the village hall charity. *Note post meeting. NALC and CALC make reference to the limited role of the custodian charity trustee in LTN 28, 28 FEBRUARY 2022. 'BASIC CHARITY LAW, Principal roles played by local councils in the trusteeship of charities'. Further information with regard to this can be sought from the Charity Commission. See appendix 3.* Clerk

**6iv** **Engagement, procedures and conflict of interest.** Section removed further to WCALC advice 10th October 2022. Motion to disregard and remove actions previously proposed at the meeting on 28<sup>th</sup> September in light of legal clarification on conflict of interests. Prps RH. Scnd LF.

**6v** **Referendum.** The Clerk confirmed that Malvern Hills District Council (MHDC) had refused access to the register of electors for the purposes of holding a referendum. As part of the criteria for borrowing (public works Loan) MHDC confirmed that the 'excessiveness principles' don't apply to parishes for 2022/2023 and that therefore the Register of Electors cannot be used for this project. A non-statutory poll would be permitted, which could be a survey or questionnaire. However the Register of Electors cannot be used for the purpose of conducting a non-statutory poll (Regulation 107, Representation of the People Regulations 2001 - this regulation mentions section 116 of the Local Government Act 2003, but that only applies to principal councils rather than parishes).

**Action.** The Clerk noted that she would need to seek further advice on how to obtain from residents a mandate for the project without a list of residents to write to. Since other halls have been funded through public works loans, there must be a way round this and the Clerk is to investigate. Councillors noted their concern that the parish council would have to resort to surveying addresses rather than named electors of the parish in order to obtain a mandate for borrowing such a large amount of money. Clerk

**Motion:** that the previous commitment to a referendum is differed (nb delayed) on the basis that use of the Register of Electors has been refused at this time. Cllrs instead to focus on a survey asking residents about local need and requirements and establishing purpose for the project. Prp: LF. Scnd: RG. No dissenters or objections. Unanimous carried. *Note post meeting. The exact timescales of this motion are later influenced by the last Motion in 6vi below.*

**6vi** **Feasibility study and scenarios of amounts required for funding.** The Hall Committee had clarified that the scheme feasibility suggests £900k but that the Committee are not asking for this full amount. The Hall Committee are asking the parish council what it would be prepared to fund/how much can the parish council support and how much the parish council would be prepared to ask residents for. The Hall Committee had confirmed that this point is fundamental because it will determine whether the scheme needs to be downsized and/or how much fundraising would be required.

Councillors noted that currently the only quotation to present to residents is the £900k option and that information from the Hall Committee suggested that it would be hard to reduce the costs without significantly changing the specification and the service level (size and purpose of the hall). Councillors **agreed** that with a formal Referendum no longer an option, they cannot survey residents providing them with a choice between the £900k project (assuming funding via £750,000 parish council precept) or an unspecified amount – the results would not be useable and would not provide a mandate for proceeding. The £750k option would raise the parish council precept from on average £30 p.a to £170 p.a per band D for 30 years.

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Councillors felt that the present economic climate made this option completely unrealistic. The parish council cannot seek grants or funding on so short a lease as 25 years and that local level fund raising amounted to obtaining the money from the same residents that pay the precept – again unacceptable in the current climate.

Councillors **agreed** that the current approach of asking what the parish council and residents would be prepared to pay is the wrong approach to the project and that instead, if the project is to proceed, all options for grants and other sources of funding external to the parish should be pursued. Once these levels of grants/funding are known, the parish council will have firmer grounds for approaching residents.

**Motion:** to reject the option proposed in the feasibility study for £900,000 rebuild, as being too expensive during the current economic crisis. Cllrs confirmed their awareness of the hardship that residents may already be suffering and that an increase in precept for this specific purpose could not be considered at this time. Prps: PP. Scnd: RG. Motion was reworded. Prps: SF. Scnd: PP. No dissenters or objections. Unanimous carried.

**Motion suggested by the Clerk for general debate and consideration:** to suggest alternative amounts (£) to present to the public. Rejected. No Proposer and no Seconder. The parish council has no basis for deciding how much funding it could seek or request of the public. A survey asking residents how much they would fund is inappropriate and meaningless at this time. A referendum has been denied by MHDC.

**Motion:** to step back from seeking further public input until such time as Savills confirm in writing that an extension beyond 25 years is possible. Prps: PP. Scnd: RW. No dissenters or objections. Unanimous carried.

- 6vii Health and Safety.** Residents present offered the opinion that local residents may not miss the facility as much as first thought and that local clubs and services use other local options without difficulty. In this sense it remains important to confirm local desire for the facility and this may be the focus of a future survey rather than asking specifically about money. Cllr Preston and Cllr Williams noted that 1) in the likely absence of a long-term lease, 2) with the difficulties associated with the site (flooding, scale and unclear public purpose) 3) parish councillor discomfort to look to borrow such large amounts as being discussed during times of economic difficulty 4) the unlikelihood of anything being resolved in the short term, it is necessary to address a perceived risk to people and property the building poses. This is particularly important as the building has been deemed as uninsurable. The Hall Committee risk assessment has not been seen by the parish council and councillors felt that recent inspections of the site did not reassure them of public safety in the event of a person gaining access to the hall. Signage is in place but this would not deter those who wished to enter. It was suggested that the demolition of the hall as a matter of urgency seemed appropriate. DCllr Harrison noted that the only reason for keeping the hall in situ in its present state would be in order to allow extension of the timescales for rebuild in the event that an application for demolition and rebuild as a joint project was submitted to MHDC, but that given the present uncertainty about the lease, that demolition might be appropriate now for reasons of public safety. The risk to personal property and person from flood debris arising from the hall alone must be taken seriously.

**Notes post meeting.**

- NALC and CALC refer to the limited role of the custodian charity trustee in LTN 28, 28 FEBRUARY 2022. 'BASIC CHARITY LAW, Principal roles played by local councils in the trusteeship of charities'. Further information with regard to this can be sought from the Charity Commission. See *appendix 3. Approved consideration of latest legal advice in relation to option of demolition.* Prps: RH. Scnd RG.
- WCALC confirmed that day to day running of the charity rests with the Management Trustees and not the Custodian Trustees, and that day-to-day management includes insuring the building.
- NALC confirmed the role and actions that a Custodian Trustee may take with regard to the hall. (LTN 28 on the limited role of the charity custodian trustee). Charity law confirms a strict

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role of non-interference by Custodian Trustees with no decision-making powers (financial or otherwise, See appendix). WCALC confirm that as Custodian Trustees, in the event of an incident occurring at the parish hall where persons ignored the warning signs and forced access through the fencing, relating to any personal harm or insurance matter, individual Parish Councillors will not be liable.

**Replacement Motion:** Whilst recognising the responsibilities of the Parish Hall Committee (VHC) for the ongoing management and maintenance of the Severn Stoke Parish Hall, the Parish Council wish to express concern about the current uninsured state of the building and the potential health and safety risk it presents to the wider community - in addition, particularly in a future flood event. As the Custodian Trustee, may we to draw the Committee's attention to the fact that the current lack of insurance appears to be in breach of paragraph 12 of the Trust Deed. **Prps: RG. Scnd: RH. Duly Carried.**

Clerk  
Hall  
Comm

- 6viii Motion:** that the Parish Clerk draft a response to the hall Committee in relation to the above. Prps: SF. Scnd: PP. No dissenters or objections. Unanimous carried. *Note post meeting: This was necessarily delayed whilst members of the hall committee were on holiday and pending legal advice.*

Clerk

*Standing orders reinstated Prps: LF. Scnd: SF.*

**7 High Green Phone Box**

**i To consider response to phone box consultation.**

The parish council directly surveyed all 18 properties in High Green and made the survey available to all residents of the parish. 12 responses were received, all from High Green residents. (8 by paper form in the response box, 3 by email and 1 by post).

All were in favour of the parish council adopting the phone box and purchasing it for £1.00.

Ideas for use: Library/Book exchange (6), First Aid station (1), Defibrillator. (Already exists but the person requested training), Local information Boards (1). No volunteers to help with the project. Clerk **instructed** to send back signed contract

Clerk

- ii If applicable after above debate - Motion to sign BT contract for adoption of High Green phone box for £1.00.** Cllrs **agreed** that the parish council should adopt the phone box and begin looking in to maintenance and repair. Prps: RH. Scnd: RG. Unanimous carried.

Clerk

**8 Planning and enforcement**

- a Overgrown hedges in Severn Stoke.** Clerk **instructed** to report to Savills or to Highways as appropriate.

Clerk

- b Reoccurring flytipping in Knights Hill.** DCllr to be kept informed of any new incidences and to continue to report to Platform.

Clerk

- c *Standing Item:* To consider and as required, arrange an extra ordinary parish council meeting for planning applications received after date of publication of this agenda.** Clerk to double check progress with Old School House and wider development applications on that site.

Clerk

**9 Speed, parking & traffic concerns** *Discuss and formulate Motions not requiring written notice*

- a Bus services** – County Council funding not envisaged to extend beyond Spring 2023.

- b Vehicle Activated Speed Signs at High Green and Severn Stoke/Clifton.**

High Green, between 26/07/22 and 28/09/22, 29,803 vehicles with a max speed of 50mph on 26/08/22 at 10.20am. 25,333 vehicles were below the 85<sup>th</sup> percentile. Cllrs debated the option for speed tubes to be placed in Severn Stoke, Clifton and Kinnersley at a cost of £150 to the parish council and asked for the matter to be placed on agenda in 2023 once county councillor has advised about results of latest Highways organised speed tube checks. The Clerk has asked Police Constable J.Hands and speed coordinator M.Watts if funding can be found for more police speed events in Severn Stoke village, Kinnersley and Clifton.

Clerk  
M. Allen  
Clerk

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c **Road works in Severn Stoke village to tackle inadequate drainage outside No.39 and along A38**  
Works have mostly been finished and contractors are due to return to assess effectiveness and a few outstanding items. Underground public highway/pathway drains outside No.39 were hitherto unconnected and water was simply channelled directly into the garden and house of that property. Cllrs gave thanks that the residents five year plus battle to be listened to by Highways appeared to be coming to an end. Clerk to maintain contact with residents and assist as required.

d **HGV restricted access signs for Birch Lane/Birch Green Lane.** These have now been installed. Clerk

e **Deer warning signs/distance plates between Kinnersley village and Kerswell Green.** These are due to be installed very shortly at parish council request in response to social media information.

f **Replacement bollards Severn Bank.** WCC have placed these on order. No further update received.

g **Enforcement at Croome London Arch corner.** Already covered.

### **Group/Committee updates**

#### **10 Croome National Trust**

a Visitor numbers remain steady, although hot weather reduced family attendance. Events planned for Christmas include visits by Santa at the lake. An application for funding for the changing places toilet has been submitted. Half term events include children eat free lunchboxes if adults spend over £5.00. Overflow car parking has seen no issues as the few times that the paddock has been used, the ground has been dry.

#### **b High Green Noticeboard Working Party.**

Posts have been obtained and waiting for the back pinboard. Funding has been received for £235.00 from the district councillors. Parish Cllrs gave thanks for this. Kinnersley and Clifton noticeboards will require maintenance in 2023/24 and will be added to budgets.

#### **c Milestone Working Party.**

Milestone plate has been received and is awaiting fixing in place.

Cllr L.  
Freeman

#### **d St Denys' update.**

Cllr Freeman to check bank details for payment of £500 room hire fee to the PCC.

Cllr L.  
Freeman

#### **e Lengthsman.**

Redundant and dangerous handrail was been removed from the parish hall by the Lengthsman and Cllr **agreed** that this could be included in the latest invoice for mowing at the parish hall. Some siding out has been conducted recently and the resident response to this has been pleasing. The road sweeper has been booked by Simon for 11<sup>th</sup> October – any additions to the intended route (Severn Stoke and A38) are welcome, though only areas with kerbs stones can be considered.

Clerk

#### **11 General Finance and Administration**

##### **a Parish council policies update.**

In no particular order, the following policies are either ready for review or are new to the parish council and require debate and adoption.

- Standing Orders; Code of Conduct; 137 grant policy; Complaints policy; grievance policy; staff disciplinary policy; equal opportunities; data protection; data retention; delegation to the Clerk policy; expenses policy; health and safety; information to be made available to the public; home working policy; lone working policy; privacy notice; template consent form.

The Clerk was **instructed** to distribute to cllrs for initial inspection and thoughts.

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**b To receive the following recommendations from the Staffing Sub-Committee:**

i. **Motion** for the parish clerk to receive one annual appraisal rather than two formal reviews held at 6 monthly intervals; Prps: SF. Scnd: PP. Duly carried.

ii. **Motion** for the parish clerk hourly rate to be increased to £10.84 (Scale 8, £311.84), backdated to 1st April 2022 which requires a one-off payment of £106.08; Prps: PP. Scnd: RH. Duly **approved**. and,

iii. **Motion** for the parish council to adopt a mileage rate for the Lengthsman of £0.35 per mile. By way of example below are recent records of mileage records by the Lengthsman: April 22, 62 miles, equating to £21.70. May 22, 56 miles, equating to £19.60. June 22, 46 miles, equating to £16.10. July 22, 55 miles, equating to £19.25. August 22, 35 miles, equating to £12.25. Prps: PP. Scnd RH. **Motion** that mileage payments take effect from September 2022. Prps: RG. Scnd: RH. The clerk was **instructed** to add a **motion** to backdate these payments from April 2022 to the next agenda. Prps: RH. Scnd. RG.

Clerk

Clerk

Clerk

c **To consider/motion to approve payment of accounts made in the previous month. App 1.**  
Prps: SF. Scnd: RW.

d **To consider/ to approve payment of outstanding accounts September 2022. App 2.**  
Prps: PP. Scnd: RH.

e **To receive the latest bank reconciliation and quarterly report.** Prps: RG. Scnd: PP.

f **Instruction to clerk to proceed with purchase of Remembrance Day poppy wreath from Royal Legion. £19.99 (incl VAT) plus £1.99 delivery per parish council. Alternative motion to source an eco-friendly option.** The Clerk was **instructed** to proceed with ordering a wreath from the Royal Legion. Prps: LF. Scnd PP. The Clerk to add an option for a donation to be made to the Royal Legion to the next agenda.

Clerk

Cllrs asked that the minutes record their disappointment that the parish council tribute and those of children of the parish to her Majesty the late Queen Elizabeth II, were stolen from the war memorial.

12 **Correspondence, dates for diary, items for future agenda**

- Resident correspondence from RA. Already covered above in various items.
- 29th Sept 4pm Tarmac Liaison meeting online.
- WCALC training for current Cllrs, methods and guidance to encourage public participation and future recruitment of new cllrs. Cllr Freeman to attend.
- Drains at London arch – Clerk to re-report for regular clearing.
- Public seats at Kinnersley and Severn Stoke. Clerk to check that there is not one at High Green. Kinnersley one is metal (to check) and Severn Stoke one is wooden – Ref maintenance add to agenda in 2023.

**Next Parish Council meeting Wednesday 23<sup>rd</sup> November 2022, 7.30pm at Croome SOQ meeting room.** The public and press are welcome to attend this meeting.

Signed .....

Chairman

.....Date

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**Appendix 1 Items already paid June/July 2022 since last PC meeting:**

*(Approved under previous agenda or required payment under contract monthly)*

07/08/2022	Mr Simon Bott	Lengthsman invoice July 2022	£272.00	VAT nil
07/08/2022	Mr Simon Bott	Parish Hall Mowing July 2022 SB0382	£34.00	VAT nil
25/08/2022	Mrs Lisa Stevens	The Good Cllr Guide publication 2009. 20th edition. Second hand.	£30.79	VAT number to check.
25/08/2022	Mrs Lisa Stevens	Clerk expenses August 2022 Printing paper and postage	£13.79	VAT nil
30/08/2022	Mrs Lisa Stevens	Clerk wage July 2022	£294.16	VAT nil
13/09/2022	Society of Merchant Venturers as Endowment Trustee for St Monica Trust c/o Savills (UK) Ltd	Parish Hall land lease. Invoice 757690.	£453.6	VAT £75.60
13/09/2022	Mr Simon Bott	Parish Hall Mowing Aug 2022 SB0394	£34.00	VAT nil
13/09/2022	Mr Simon Bott	Lengthsman invoice Aug 2022	£272.00	VAT nil

**Appendix 2. Items for payment July 2022:**

Mrs Lisa Stevens	Expenses 2022. Office equipment. Pin board. Printing paper.	£16.90	VAT nil
Mrs Lisa Stevens	Clerk wage September 2022  (Nb paid one month in arrears each time)	£294.16	VAT nil



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Appendix 3. NALC advice. Published 28 FEBRUARY 2022

**LTN 28 | BASIC CHARITY LAW** Principal roles played by local councils in the trusteeship of charities

Definition of custodian trustee: the council holds the property but takes no decisions on its use.

*Extracts are included here for usefulness and reference.*

Para 10, LNT 28. The role of a custodian trustee is very limited. The legal title to the charity's property is vested in the local council and it has custody of all documents relating to the property. The managing trustees must have free access to the title deeds. The charity property should be listed in the council's assets register but with nil value. Responsibility for insurance of the charity property falls on the managing trustees. The custodian trustee has no power to manage the property and no role in the administration of the charity. The custodian trustee duty is to perform all lawful acts necessary to enable the managing trustees to administer the charity efficiently. The custodian trustee should not act if the matter is a breach of trust or involves liability for the custodian trustee.

The custodian trustee can only assist the managing trustees - it cannot have any management responsibilities itself, no matter how convinced individual members of the corporate body may be that it does... All sums payable to or out of the income or capital of the trust property should be paid to or by the custodian trustee. It may, however, allow the dividends and other income derived from the trust property to be paid to the managing trustees (or to such person, directly or by credit to their bank account, as they may direct). If this is allowed, then the responsibility for ensuring the proper application of those funds falls to the managing trustees, and the custodian trustee is not answerable for any loss or misapplication of them. The custodian trustee, if it acts in good faith, is not liable for accepting as correct, and acting upon, any written statement by the managing trustees relating to any matter of fact upon which the title to any or all of the trust property may depend. It is also not liable for acting upon any legal advice obtained by the managing trustees independently of it."

Para 13 LNT 28. Pursuant to s.4(3) of the 1906 Act, custodian trustees are able to charge for their services. However, a custodian trustee:

- cannot act for the managing trustees even if there are none; and
- must carry out the managing trustees' instructions unless that would involve the custodian trustee in a breach of trust or some personal liability.

Para 18 LNT 28. Charities can lose all of their managing trustees or have insufficient trustees to be quorate. The custodian trustee would still have no power to manage the charitable property and no role in the administration of the charity. What options are there to re-activate the charity? The Charity Commission has powers to appoint trustees (including appointing the council as sole trustee). And under section 36 of the Trustee Act 1925 the remaining trustee(s) may have the power to appoint other trustees.