

# CHILHAM PARISH COUNCIL

## MEETING TO CLARIFY RELATIONSHIP BETWEEN CPC AND CFDB AND TO AGREE NEXT STEPS FOR CHILHAM SQUARE IMPROVEMENT PROJECT

29 FEBRUARY 2012

### Present:

Chilham Parish Council (CPC)	Alistair Ralph Derrick Kennett Alan Millar Alison Ranns Graham Swan	Chair of CPC and this meeting
Chilham Future Delivery Board (CFDB)	David Hayes Peter Higgs Helen Kirwan	Chair of CFDB
CPC/CFDB	Ben Glancy	
Ashford Borough Council (ABC)	Paul Naylor Doug Marriott Colin Mawston Susanna Aiano	Deputy Chief Executive Borough Councillor Head of Property and Community Projects notes
Kent County Council (KCC)	Andrew Wickham	County Councillor

### Apologies:

Helen Tharp CPC and Rob Berry CFDB

*Meeting commenced at 2.05pm*

1. The Chair welcomed attendees and advised that the objective of the meeting was to move forward in order to fulfil the aspirations of parishioners. As agreed previously by CPC any matters prior to May 2011 when the new parish council was elected are considered to be closed.
2. There was an objection to this from Cllr Swan but as the PC had voted and supported this without comment it was not upheld. PN advised that it was not possible for ABC to contribute to points that needed to be resolved within the parish council, and that the purpose of being there was to comment on proposals to strengthen the relationship between CFDB and CPC.

**Item 1 Is there a beneficial reason for CFDB to exist and is it a legitimate organisation?**

**Item 2 Are ABC happy with the current relationship between CPC and CFDB?**

**Item 3 What suggestions do ABC have for future governance of CFDB?**

3. CM began by stating that CFDB are able to apply for grants that CPC would not be able to (for example grants for village halls from KCC), and it is generally considered that an independent company has a more focused attitude to an individual project. These reasons could show that it is beneficial for CFDB to exist.
4. CM advised that he had produced a note for Cllr Marriott in which he considered the current structure of the delivery board and the connection to CPC. His research showed that CFDB is a limited company that is legitimately registered with

Companies House, and is established as its own legal entity. However there is nothing in the Memorandum and Articles of Association (MOA) to suggest that there is a legal connection between CFDB and CPC, which is a control that CM would expect to see. He felt that this had probably been the original intention but that nothing had been made official. He suggested three things that could be done to strengthen this relationship:

- a) Write into the MOA that CPC has the right to nominate a certain number of Directors onto CFDB to provide a conduit between the two organisations
  - b) CM was unsure who the current members of CFDB were, but CPC could also become a member of the company as well as having Directors
  - c) It could be decided that certain types of decision could only be passed by members of the company (unanimously), instead of by Directors
5. CM confirmed that CFDB was not a registered charity. In his note to Cllr Marriott he had said that it could be an offence to call an organisation a charity if it was not registered as such with the Charity Commission (CC), subject to certain exceptions. CFDB has confirmed that it meets one of these exceptions as its turnover does not exceed £5k (limit soon to be increased to £10k). The Commission does this simply to reduce administration and recognises that it is a problem with smaller organisations. CM suggested that two things could be done:
- a) CFDB could apply to HMRC for a charity number (for example this could be given to a bank for tax relief purposes)
  - b) CFDB could affiliate itself with smaller organisations
6. Cllr Millar reported that CFDB's accounts show that its turnover in one year was £10k and that it had had three major incomes; therefore it had breached CC requirements and was misleading. DH advised that the Commission's requirement was for the annual turnover figure to be above £5k each year, not just on one occasion. He advised that CFDB was not for profit and had charitable aims; therefore they would continue to strive to meet the criteria to register. He reported that they had also written to the Commission asking for advice on exceptional circumstances or the ability to self register, but had not yet had a response. He explained that CFDB's website states they are a charity, but does not say they are a *registered* charity – however he is happy to clarify that point further on there.
7. CM agreed with DH that if/when CFDB can prove its turnover is above £5k on a consistent basis then they should apply again for registration. It is useful for scrutiny and for third parties to prove a voluntary organisation is a registered charity, but ultimately not being registered does not stop an organisation having charitable aims.
8. Cllr Millar explained that he was concerned with the governance arrangements of CFDB. He felt that they were in breach of three of the six guidelines set out by the CC – for example he advised he did not feel they were open and transparent, and were a political company with their own agenda. He welcomed an independent view and CM advised that he had given three suggestions that in his view would strengthen the governance arrangements (paragraph 4). CM felt that it was important not to put too many controls in place as then the CC might not see CFDB as independent, and advised that he had not seen anything that made him believe that CFDB was political. He also reported that one of the thirteen things organisations can do to become a charity is regeneration – which is in the MOA of CFDB.

9. Cllr Millar thanked CM for his view but maintained that CFDB were a private lobbying organisation with views that were opposed to the parish. Cllr Swan agreed with this and felt that the ambition of a few was put above the desires of the parish. Cllr Millar asked whether CFDB could become a sub committee of CPC but CM advised that they would not be able to apply for grants as set out in paragraph 3.
10. DH advised that CFDB had sought independent legal advice which was similar to CM's views. Therefore at its meeting of 16 February the board resolved three things (*taken from CFDB's website*):
  - a) that membership of CFDB be extended to CPC in accordance with CFDB's Memorandum and Articles of Association and resolution 2 below
  - b) that CPC, upon becoming a member, and acting through its Chair, has the right to nominate up to three CPC councillors as Directors of the Board of CFDB in accordance with CFDB's Memorandum and Articles of Association
  - c) that CFDB shall continue to be accountable to CPC for its actions by reporting to CPC monthly (or as required by CPC) and that CFDB decisions regarding the following would be subject to its Members approval:
    - i) Any applications for grants and funding
    - ii) Any appointment of contractors
11. PN welcomed these resolutions and advised that a formal relationship between the two organisations would be beneficial if KCC/ABC was asked for support if and when the project becomes reality. In his personal view he felt that the current structure of the relationship would not satisfy ABC requirements. He asked DH who the current members of CFDB were (and advised this should also be clarified in the MOA) who replied that each of the five Directors were also members, and if CPC appointed three Directors these would also become three members. CM felt that CPC should be the member of the company as a corporate entity and that members' decisions on certain resolutions (as outlined above) could be unanimous.
12. Cllr Millar felt that he had raised the issue of governance some time ago but in the interests of unity was happy to put himself forward as a Director from CPC, and felt this would be an excellent way forward. CM reminded all councillors that the nominated Directors from CPC would have a duty to CFDB and during its meetings must focus entirely on the board's aims and objectives.
13. PN raised the issue of VAT and informally advised that he currently doubted whether CFDB would be successful in reclaiming VAT as grants were outside this scope and there are no taxable supplies. Forming a relationship with CPC or KCC and delivering the project on their behalf may solve this.
14. Cllrs Millar and Swan were still keen to ensure that votes on the project would be taken across the parish, not just in the vicinity of the square. DH advised that CFDB would carry out whatever decisions were taken by its members. County Councillor Wickham reminded the councillors that CPC as a whole would be one member and therefore could have its own agenda (as opposed to Directors that had a duty to the company).
15. Cllr Ranns advised that as the newest member of CPC she was keen to guard against going backwards, and that she was aware there had been a well attended public process in 2010 which should now be taken forward. Cllrs Millar and Swan voiced their concerns over that process.

16. DH queried the impact if CPC was to gain a majority on the board and CM agreed that this would be advised against as a controlled company could jeopardise registered charitable status.
17. Cllr Millar asked if ABC Councillor Marriott would consider having a role as an independent Director, and CM reminded all councillors that in a role as CFDB Director each person should work to the best interests of the company, and as such be independent from any other role they had. Cllr Marriott replied that he had previously carefully defined his role as an observer and had been concerned about the accountability and democracy between the two organisations. He had no wish to become a CFDB Director, but if it was beneficial he would consider it. Cllr Wickham felt this would not be necessary as CPC would be a member of the company and therefore there would be democratic accountability. CM reminded all councillors that he was suggesting that company member decisions should be unanimous, although the decision of the Parish Council as a corporate member would be by a majority.
18. DH agreed to send the board's February resolutions to the CPC Clerk to circulate for CPC to consider and vote on whether to become a member and nominate Directors at their April meeting. Cllr Millar felt that CFDB should take no further action until the governance arrangements are considered and CPC has the opportunity to respond to the proposals, which DH agreed to.
19. Cllr Swan raised concerns over previous parish minutes being incorrect, the dual role of the parish clerk, of cash being passed at the July meeting and of the cost of his research, but was advised that those issues were not for this meeting and should be taken forward privately if necessary.

**Item 4 Has ABC or KCC received complaints from parishioners and what were the findings from their investigations into these complaints?**

20. PN advised that he had provided informal advice to Geoff Dear on how to shape the consultation process and had received correspondence from Cllrs Millar and Swan and commented on how they could take their concerns forward. He had not commissioned any investigations and now felt it was time for both parties to find a way forward. CM emphasised that it was a misconception that ABC had any powers over parish councils. There are no reserve powers and the only involvement ABC would have is regarding the Councillors Code of Conduct. He had received no complaints regarding this and had not commissioned any investigations.
21. Cllr Wickham advised that he had received correspondence from Cllrs Millar and Swan and was now keen to find a way to move forward.
22. Cllr Kennett asked if correspondence had been received from any individual parishioners and was advised there had not been to ABC's or KCC's knowledge. Cllrs Millar and Swan responded that they had been approached by parishioners who were worried they would have problems with their business activities if identified by CPC/CFDB, but Cllr Millar said he would be happy to provide a list to ABC. Cllr Glancy mentioned that CFDB had also received complaints regarding some actions by CPC councillors.

**Item 5 To decide the way forward**

23. Cllr Wickham briefed that Andy Cochran (AC) of KCC Highways had advised that they were supportive of any of the three options for Chilham Square. They had no objections to the scheme provided it conforms to all Highways requirements and had five approved contractors that could be used, but confirmed there would be no funding available.

24. Cllr Swan raised an objection about the consultant feasibility study and the involvement of Chilham Environmental Protection Society (CEPS) – in particular he felt that CPC had been given the bill for the consultant's expenses, travel and accommodation. As former Chair of CEPS, Cllr Kirwan advised she was happy to address any issues outside of this meeting in writing.
25. CFDB had been asked for agenda items for this meeting, but as the decision had been taken that nothing should be progressed until CPC had discussed the situation at their April meeting it was agreed that these points would not be considered at this stage.
26. CM advised that once CFDB had electronically circulated their board resolutions to all CPC members this offer should be debated at the CPC meeting, and if agreed a physical amendment to the MOA would be needed.

#### **Item 6 What are the funding opportunities and how would this affect the precept?**

27. PN advised that as there would be no funding available from either ABC or KCC the scheme would have to be funded through 100% grant funding. Ongoing maintenance would also need to be considered.
28. Cllr Glancy explained that during the consultation exercise his group had considered ongoing maintenance costs as part of the project remit and contract. As these are detailed points they will be considered once the governance arrangements have been debated.

#### **Conclusion**

29. CPC and CFDB gave their thanks to ABC and KCC for their time in attending the meeting, and appreciated that this was outside of their remit. There was general consensus that the discussion had been extremely useful in moving forward.

*Meeting closed at 4.15pm*

#### **Resolutions:**

- i) **As CFDB have been unable to register as a charity they will consider the advice of CM in paragraph 5 and implement his suggestions.**
- ii) **That CFDB will clarify on their website that they are not a registered charity but do have charitable aims and are not for profit**
- iii) **That the offer from CFDB to CPC on strengthening governance arrangements as set out in paragraph 10 be circulated electronically to the CPC Clerk to circulate to all CPC Members.**
- iv) **Consideration should be given as to the arrangements for the voting of Company Members (and possibly that Members decisions must be unanimous)**
- v) **That CFDB should consider options for reclaiming VAT**
- vi) **That CPC will consider the offer from CFDB at its April meeting**
- vii) **That until CPC has discussed this proposal CFDB will have no further activity**