

Wildernesse Residents Association

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Minutes of Wildernesse Residents Association (“WRA”) Annual General Meeting (“AGM”) on 8 March 2020 at 7.00pm at Wildernesse Golf Club, Park Lane, Seal.

In attendance: members from 26 houses from the following roads:

Blackhall Lane (“BL”), Parkfield (“P”), Park Lane (“PL”), Seal Hollow Road (“SHR”), Wildernesse Avenue (“WA”) and Woodland Rise (“WR”).

Apologies for absence: Cheyn Cottage (BL), Kilnwood (BL); Wealden Hall (P); Wood Ridings (P); Wildernesse Farm (PL); Firgrove (SHR); Chance Mead (WA); Amberwood (WR); Downash (WR); Green Hailey (WR); Strathalmond (WR); Tara (WR).

Present:

Margaret Crabtree – Kent County Council

Tim Martin - Seal Parish Council Chair

Roger Gough - Kent County Council leader

Merilyn Canet (Deputy Mayor of Sevenoaks)

Tony Goldsby – Wildernesse House

Introduction - David Knox (Chairman WRA Executive Committee)

Minutes of 2019 AGM – taken as approved

Report of Chairman – David Knox (“Chair”)

Transcript of Chair’s report is attached at Appendix 1.

The Chair requested that his thanks for the time and effort of fellow Committee members be minuted.

Report of Treasurer and accounts for year ended 31 December 2019

The Treasurer’s report and accounts for the year ended 31 December 2019 were circulated with the AGM notice. Key points to note are that:

- Membership increased from 104 to 110 houses resulting in subscription income of just under £11,000;
- Costs were much higher than last year with more than £16,000 in legal and professional fees;
- Sought advice from a QC and boundary expert but all covenant issues were satisfactorily resolved;
- Engaged Rapleys in respect of Tanglewood at a cost of £3,800;
- Website redesign and launch will be in 2020 accounts at relatively modest cost of around £500.

Subscriptions for 2020

It is proposed that subscriptions should be maintained at the same level as last year: £100 for Full Members; £50 for Associate Members; and £30 for Friends.

RESOLUTION: To maintain subscriptions for 2020 at the same level as for 2019 – carried unanimously

J Phipps (Ronceray, P) asked whether, at some point, subscriptions are going to have to be increased to provide a more substantial reserve. He indicated that he would prefer this to be levied across the board than from individual voluntary contributors. The Chair responded that the Committee would keep this under close review but it was a balance between holding an excess of funds in reserve which were not being used and having a shortfall.

Election of Executive Committee Officers:

The existing officers shown below are required to be elected annually under Rule 6 of the Constitution.

- **David Knox (WR) as Chair**
 - **Mark Kibblewhite (WR) as Deputy Chair**
 - **Roz Roxburgh (WR) as Secretary and**
 - **Peter Calvert (WA) as Treasurer**
- retire and, being eligible, offer themselves for re-election.

RESOLUTION: To re-elect Executive Committee Officers – carried unanimously

Re-election of Executive Committee Members:

One half of the non-officer members of the Executive Committee are required to be re-elected each year. As a matter of good practice, the Executive Committee has determined that all members should be subject to re-election each year. Accordingly,

- **Carrie Thompson (P); and**
 - **Martin Greenslade (P)**
- retire and, being eligible, offer themselves for re-election.

RESOLUTION: To re-elect non-officer members of the Executive Committee – carried unanimously

Election of additional Executive Committee Member:

- **Laura Daniels (WA)**
- has notified the Secretary in writing 21 days before this meeting that she is willing to serve as a member of the Executive Committee, if elected.

RESOLUTION: to elect Laura Daniels as a member of the Executive Committee – carried unanimously

WRA's revised Constitution and Role Statement

The Constitution and Role Statement have been amended to take into account members' comments and the amended versions were attached to the email inviting members to the AGM. Members were invited to make any comments on the Constitution and Role Statement before their adoption.

RESOLUTION: to adopt 2018 Constitution and Role – carried unanimously

Approach to funding legal action to fight a potential covenant breach

Transcript of Chair's summary of the proposed approach to funding legal action is at Appendix 2.

Mr Hedley-Clark (BL) commented that the Executive Committee had spent quite a lot on legal fees in the past year and asked what impact this had had on reserves and whether a slight increase in subscriptions should be considered to bolster reserves.

The Treasurer responded that reserves should be about £30,000 after this year's subscriptions and that this is reasonably high historically. That level of reserve should enable the Committee to undertake the initial exploratory phase of assessing what is required to counter any potential covenant breach.

The Chair summarised that at least two members believe we should consider higher subscriptions.

Chris Elliott (P) asked how many residents on the Estate are not members of the WRA.

The Treasurer responded that currently 107 out of 160 houses are members – the full breakdown (by road) is in the accounts. Membership is lower in SHR and BL The Executive Committee is constantly trying to increase membership but it is a voluntary association and it is not possible to compel residents to join.

David Moscow (P) observed that the two key covenants are “one house per plot” and “75 [or other] foot building line”. He said that he sensed that the Executive Committee were perhaps attaching too much of a link between the covenants and the character of the Estate. It is a building scheme but the “local list” of notable houses that should not be demolished was drawn up by someone in the Council who didn't live in the area.

The Chair responded that the Committee recognised that the local list was overdue a review and that the respecification of the houses on the local list will be part of the redraft of the Conservation Area Appraisal and Management Plan (“CAAMP”). He said that the Committee is absolutely clear that maintenance of the Conservation Area such that the character of the Estate is not changed is critical and certainly helpful to the ongoing protection of the covenants, a point which had been confirmed by one London legal firm consulted.

David Moscow argued that style considerations should not be regarded as a potential covenant breach.

The Chair responded that the committee was certainly not minded to object to development plans on the grounds of style alone but it was worth remembering that the covenants do include stipulations relating to materials and the Committee needs to consider this. However, the Committee tries to avoid opining on the basis of style alone.

John Phipps asked whether the WRA will have any input into the revised CAAMP.

The Chair responded that the committee, residents and others would likely be involved in providing input into the re-draft of the CAAMP and that we would expect to be involved in the selection of houses that are included in the local list. Our decision would be based on factors such as those houses designed by noteworthy architects, gardens of importance etc.

The Deputy Chair commented that the Council has a meeting on 10 March at which a decision will be taken on the timing of the review of the various CAAMPs in the Sevenoaks District. This is crucial to the timelines and for us to understand how we can be involved.

The Chair reflected that the local list presents an interesting conundrum: typically Baillie Scott houses are not nationally listed buildings but one might expect that they are the sort of property that should not be demolished and would be on the local list as being noted as contributing to the character of the conservation area. But if we only protect the Baillie Scott houses, many of the other 160 properties could be replaced by modern houses and that would alter the character of the Estate. There is also the question of the introduction of very innovative designs that are out of character with the Estate - if one house is completely out of character, is it the “thin end of the wedge”. The Council made the point, when approving the planning application for the replacement house at Tanglewood, that one house does not establish a precedent and a number of similar properties would alter the street scene and affect the Conservation Area.

John Phipps said that he is concerned that the Council keep the WRA in the loop and that our voices are heard.

The Chair explained that the Committee has failed recently to get any further meetings with Sevenoaks District Council planners. For example we are also concerned about the planners' approach to hedges. There is no requirement to seek planning permission to remove a hedge. Tanglewood has taken down a row of trees that were deemed to be a hedge that was in fact a row of 70-80 foot leylandii. Les Jones (the tree officer) looked at it and said it was a hedge and the trees were felled. The natural conclusion is that, if

all hedges were taken down on the Estate, it would completely change the character of the Estate. The Committee would like a meeting with the Council to bring hedges into the debate.

Wilderness House update – Tony Goldsby of Lifestory

Pegasus Life has combined with two other businesses and is now part of a Group called Lifestory.

Tony Goldsby admitted that Pegasus Life had not been the perfect neighbour in the past and had possibly bitten off more than it could chew in Wilderness House. Lifestory is planning a relaunch in June; their marketing had not been as successful as they had hoped. The contractor had gone bust and the team is currently rectifying defects. The Sales and Marketing activity is planned to be better aligned with people who are likely to want to move in. They are thinking of broadening the target age of potential purchasers of the Mews Houses to 50+. They are looking for the right operator for the on-site restaurant and considering how the wellness centre could be opened up to residents.

They are aware that the pedestrian access from Woodland Rise needs to be restored and that they need to make Dorton Drive look a bit more attractive.

They have planning permission for 53 units off Woodland Rise. They don't want to build 53 units and only sell 30 so they are being pragmatic. It is not possible to say what will be built there as it is still under discussion and they don't yet have planning permission, but it is recognised that it needs to be in keeping with the other houses in the area

David Moscow commented that he is aware that people who have looked at properties in the Wilderness House development don't want the stamp duty cost; nor do they want to pass on to their children something that is difficult to sell. The maintenance charge is high for people in the target age range. He said that he had raised these matters with the sales team. He asked whether Lifestory had considered a rental model.

Tony Goldsby responded that the ultimate owner has expectations in respect of the money they have invested and that the covenants may not permit this.

Nigel Wightman asked where Lifestory is on access from Wilderness House/the Sylvan Development to Park Lane.

Tony Goldsby responded that the viability of the site depends on that access to Park Lane.

The Deputy Chair commented that the previous management [Pegasus Life] didn't listen to the Estate and suggested setting up a working group so that the Estate has some input.

Any Other Business

Town Council Deputy Mayor – Marilyn Canet

Sevenoaks Town Councillor (Rachel Parry) is now very ill and has been unable to represent the part of the Wilderness Estate that falls within her purview. Roddy Hogarth is the Estate's District Councillor and any issues should go through him and Julia Thornton. They both know the area well and are experienced Councillors.

Final consultation on the Sevenoaks Neighbourhood Plan will be going to referendum at the end of March. This is likely to increase housing in northern Sevenoaks (Bradbourne Lakes, Bat & Ball and Greatness). This will affect residents on the Estate because the roads are likely to become very congested.

Gigaclear – Richard Silva (WR)

Richard Silva asked whether any other residents suffer from insufficient Gigaclear bandwidth. The Chair responded that the fibre optic cable was laid very shallowly and may have been attacked by animal life but offered to survey the Estate.

There being no other business, the Chair declared the meeting closed.

Appendix 1 - Report of the WRA Chairman for the year ended 31 December 2019

During the course of 2019 your committee has re-written the constitution of the WRA, re-designed the website of the WRA, continued to liaise as necessary with neighbours, such as at Wildernesse House, and with relevant bodies such as the parish, town and county councils and it has continued to monitor planning applications and other factors of relevance to the continuing preservation of the covenants and the Wildernesse Estate Conservation Area.

I am pleased to welcome to the meeting today Deputy Mayor Cllr. Dr. Marilyn Canet from Sevenoaks Town Council, Margaret Crabtree from Kent County Council, Roger Gough of Kent County Council and Tim Martin from Seal Parish council.

I shall firstly update you briefly on the past year and then also talk about the continuing challenges that lie ahead for the WRA and your committee.

Firstly, with regard to the new constitution. We circulated a final draft of this, and the role statement, with the agenda for this meeting a month ago. My particular thanks go to Roz Roxburgh and Mark Kibblewhite for their efforts here. We will come on to this as a separate agenda item later in the meeting for a formal vote by you to approve its adoption. The drafting of this went through a number of iterations and with full consultation with yourselves. Where appropriate and agreed with those who provided feedback and recommendations, we have incorporated such changes as proposed. The role statement has been tweaked but, to all intents and purposes, remains unchanged from last year. I would always draw your attention to this document as it spells out what we believe you consider the remit of the WRA to be. If we are wrong in this regard then we ask that you speak up and let us know. Our intention is always to do no more than to represent the best interests of our members and to do so in an open and transparent manner.

We also sent to you a couple of weeks ago a link to our new website. I would like to thank Peter Calvert for his considerable work on this. The site can be updated and upgraded as we go along and we would welcome your feedback and recommendations. We can always do with more photographs of the estate to show it in its best light so if anyone has any that they would like to share with us then please do so. The site is a good and interesting source of information. It may be that, in time, we can develop the site to become more interactive and real time and as a means for two way conversation with our members.

We are certainly keen to explore ways of engaging with our membership as much as possible. We want to be sure that we know what you are thinking, that we know when we are getting things wrong or misreading the mood of the majority of the estate and that we are fulfilling our remit as your committee as well as we can. Please do always speak up by contacting us with all types of feedback. It is welcome and most certainly could never reflect adversely on you.

We have considered all planning applications on the estate, no matter how big or how small, so that we can treat each equally according to whether there is a potential covenant breach or a potentially detrimental impact on the conservation area. The highest profile of these has been

Tanglewood, on Parkfield, where permission has now been granted by the council for the demolition of the existing property to be replaced by a new development with a progressive design. Tanglewood is a property that has been listed within the conservation area appraisal and management plan (CAAMP) as contributing to the character of the conservation area. That plan states that such properties should not be demolished. More on this topic shortly but specifically on this site we felt that the process of planning applications was such a departure from other recent developments that we should seek independent professional input on the impact on the conservation area. We appointed independent planning consultants, Rapleys, to produce a report on the impact of the development on the conservation area. Within the timeline of the planning applications for this site, permission had been granted for demolition and a rebuild so long as the replacement property was similar in appearance to a previous application that had been granted approval to develop the existing property in a sympathetic manner. A subsequent application post-demolition, to build a property very different in terms of appearance scale and impact was submitted. You will be aware that the advice from Rapleys was that the scale of this was such that it would have a detrimental impact on the conservation area. As such we objected. This application was declined and the conservation officer made detailed remarks on the negative impact on the character of the estate. The final application took into account many of the points raised by the conservation officer and altered the plans, including roof design, ridge structure and height. We wrote to the council to express areas of concern but did not object outright. The advice we received was not unequivocal on the matter of scale and we were loathe to be drawn to a material conclusion on matters of design and style. The council provided a detailed response to our concerns and the application was granted approval.

I am aware that I have gone into this particular case at some length but it has been, I think it is fair to say, a high profile and fairly controversial situation. It has taken up a lot of the committee's time and we most certainly have not always been unanimous in our views on how to deal with it. It represents an important case study in many respects and, of course, we spent money on advisers, which Peter will cover off shortly, and so I felt it important for you to understand why and to be open with our process. We are happy, of course, to answer questions on this if you would like more detail.

There are other properties where we have considered demolition and re-build, one of which is live. Another where, again, we sought professional legal and boundary specialist advice to be sure that we were 100% confident in our position on the need to prevent a possible covenant breach. Again, Peter will talk to this expense but this was money well spent. We have strong legal opinion which we have shared with the owners of that property and which has led to a satisfactory mutual outcome. We no longer feel that a potential covenant breach is imminent.

There is at least one other plot of land on the estate, though, where change of ownership has crystallised again a threat to a restrictive covenant. We have engaged with that new owner and will remain very firmly on top of that situation.

This is just a snapshot really of the work that we have been doing this past year. It has been incredibly busy and, I don't mind saying, at times really quite challenging for the committee which does not always agree on issues, planning especially, and so our conclusions have rarely been unanimous. But diversity of opinion is critical and constructive and we continue welcome such diversity and also in terms of the composition of the committee. I am delighted that Laura Daniels, from Wildernesse Avenue, has agreed to put her name forward for election to the committee,

shortly, and would welcome more nominees, especially from roads where we are under-represented, in particular Blackhall Lane and Seal Hollow Road.

I mentioned that I would say a word about some of the challenges that lie ahead for the WRA. In many ways they are nothing new. But it is clear that there is increasing pressure for development and renewal of properties on the estate as ownership changes hands, as older properties become increasingly hard to upgrade to the demands of modern family living and as new owners look to create the house of their dreams. Let me absolutely clear, the WRA does not wish to stifle such dreams and aspirations. Not only does it not want to stand in the way of developments and modernisation of properties on the estate, it overtly recognises the benefit of upgrading properties, not least to the benefit of environmental concerns, to enhancing the conservation area and sustain the value and the character of the estate.

Our primary concern will always be that of protecting the key covenants, that are the one house per plot and the 75 foot building line restrictions (in this latter case there are a very small number of exceptions). An agenda item later in the meeting is to talk about the financial implications of contesting a potential covenant breach so more of that later.

Next, our concern is the preservation of the character of the estate and the protection of the conservation area. In this matter, one area of interest to which I have referred earlier is that of houses on the list as contributing to the character of the conservation area in the CAAMP. As I said, if a house is included on that list then the CAAMP states that it should not be demolished. In which case, as a matter of fact, should the WRA always object to plans to demolish and re-develop? We believe not. We believe that each case should be considered according to its own merit and one case should not be deemed to set a precedent for future cases. It may be that the contribution is due to the plot, the gardens, the positioning of a property and not necessarily the building itself. Some buildings on that original list have been acknowledged by the council as having little, if any, architectural merit but that does not mean that they are not important for other reasons and there may be solid grounds for why demolition should be prohibited. A number of properties on the list have been substantially redeveloped successfully whilst embracing the concerns of conservation officers and the requirements of CAAMP. The entirety of the properties not having been demolished, some walls being retained (internal and/or external) but the resulting external appearance of the house being quite different to the original. In any event, we believe that the list would benefit from rigorous scrutiny alongside the re-drafting of the CAAMP to ensure that it remains fit for purpose in every respect. We await updates from the council in this regard and so, in the meantime, we must continue to refer to the 2010 documents as the only prevailing supplementary planning document for the estate and to exercise our judgement, with the input of independent, professional advice if appropriate. The council has a committee meeting on 10 March considering the timetable for re-drafting of conservation plans across the district and so we hope to find out soon where the Wilderness plan sits within this timetable. We are acutely aware of the risk of subjectivity and inconsistency in our approach here and so we are declaring these to you now, very openly, and absolutely welcome your input on the matter.

An interesting ongoing development is the management of trees and vegetative screening on the estate. At the heart of the character of the conservation area is the arcadian, semi-rural nature brought about by trees, hedges and shrubs – that natural boundaries that ensure that the vast majority of properties are only visible from roads and neighbours by way of glimpses and partial sight through vegetation. As a conservation area, all tree work must receive permission from the

Council but planting deemed to be hedges and shrubbery not so. This is a worry as a mass removal of such critical planting would materially alter the street scenes and be damaging to the conservation area. We are seeking to engage with the council on this issue.

As ever, an ongoing challenge for us is our level of effective engagement with the council and our ability to understand their thinking, exert appropriate influence and ensure consistency and predictability in their decision making to the extent that it affects the conservation area. We continue to do our best in this regard and have a number of meeting requests outstanding.

With regard to Pegasus Life and Wildernesse House, I am delighted to welcome Tony Goldsby to this meeting. This is another agenda item for later in the meeting and he will update us all briefly on their development of Wildernesse House. Obviously, we are primarily concerned that the venture is a commercial success, that the house and the mews are fully sold and occupied and that the business is financially viable and self-sustaining so that we have a happy and stable neighbour on the estate. Tony can talk about plans for re-launching the sales and marketing campaign, for the restaurant, for the spa, for the construction of the access road to Park Lane and for the development of the Sylvan site at Dorton Drive. We look forward to hearing from him.

I will now hand over to Peter for his Treasurer's Report. But before I do that, I would like to thank the committee for its hard work and commitment of not inconsiderable time this last year in trying to represent all of you to the best of our abilities.

David Knox

8 March 2020

Appendix 2 - Funding the cost of taking legal action to prevent a breach of restrictive covenants on the Wildernesse Estate

The WRA was established in 1996 following the successfully fought case brought by a resident on the estate to prevent a significant covenant breach at a property named Westwood on Blackhall Lane. At that time, the owners of Westwood applied for a modification to the one house per plot covenant under section 84 of the Law & Property Act, 1925. They did not deny the existence of the covenant in the conveyance of 23 October 1925 but they argued that the character of the neighbourhood had changed such that a modification was justified. They started the development having received planning permission. As a result, an injunction was served by the resident (interestingly, from a neighbouring road and not a direct neighbour) and this was supported in writing by numerous other residents from the estate. The application to the Lands Tribunal for the modification was denied. The cost of funding the injunction was c. £80-£90k and was funded by around 70 residents with a further 30 signed letters of support. This ruling established the “thin end of the wedge” principle. It followed two other rulings in the 1980s when covenant breaches were successfully fought by a small handful of neighbours at their own effort and expense in cases that established that the estate was a building scheme within which all covenant holders stand to benefit from the continuing integrity of all covenants. The WRA was established to help to co-ordinate the ongoing preservation of the covenants by monitoring planning applications and potential threats and, by way of the modest annual subscriptions, taking preliminary legal and other professional advice where appropriate to determine whether or not, in the case of a potential breach, further, and likely costly, legal action would be required.

This continues to be a key component of the role statement of the WRA and the day to day activities of its executive committee to this day. For the avoidance of doubt, the annual subscriptions are intended to be no more than sufficient to fund early stage legal and professional advice and other general administrative costs. They would not be sufficient to stand behind any legal action. As a voluntary residents’ association, the WRA does not benefit from the covenants itself and so is not in a position to bring any action, such as an injunction or defence at Lands Tribunal, itself. If action must be taken then it must be by a covenant holder, i.e. a fellow resident on the estate. But how might that neighbour seek to pursue such action? Can they finance it alone and, indeed, should they be expected to? Or are they, and others who might act together, acting on behalf of the majority of the estate’s residents when they fight a covenant breach?

In which case, the WRA would play a role in co-ordinating the residents, in gathering all relevant expert advice and in putting together a structure whereby a large group of residents would provide the funds to pursue appropriate legal action. The WRA committee remains absolutely confident that the character of the estate, in no small part enhanced by the preservation of the conservation area, has not changed since the 1920s in such a way as to compromise the integrity of the building scheme nor the enforceability of the restrictive covenants. It will work with residents to ensure the preservation of the covenants. There are certain plots on the estate where such breaches are possibly live and there is always the threat of new owners or developers seeking to develop properties on land protected by the covenants. We are confident that we would continue to be successful in ensuring that the one house per plot and 75 foot building line (to which there are a small number of exceptions) covenants are not breached in the future. Covenants are not a matter for planning officers at the council, so it is possible to have planning permission on a plot where covenants would be breached but this should not affect the outcome to any legal proceedings.

Where the WRA identifies a situation when a covenant breach is likely, where it is deemed necessary to serve injunction against development and/or defend the position at the Lands Tribunal, it will take appropriate legal and other professional advice. This advice would, initially, be covered by the working capital of the WRA. If such funds proved insufficient then we would come to members to ask for additional funding.

A full analysis of the strength of the position would be available to members. A full cost analysis and risk analysis would be provided. Details of the professional advisers, the process and the timetable would be provided. A communication strategy would be provided. A governance structure for the process would be put in place to ensure that funds were used wisely and appropriately.

All of this information would be provided as appropriate (precise timing of release being under legal advice so to ensure our position is not weakened by inappropriate disclosure to the plaintiff's side) at the time of explaining to all residents on the estate, and not just WRA members, what is required to pursue a legal action.

It is recognised that not every household would be willing or able to finance a legal case. There are three primary elements to the ultimate possible cost in the event of losing a case:

- The legal costs
- Potential damages claim
- Reimbursement of plaintiff's costs

The courts would need to be satisfied that those bringing the case have the financial resource to go through with the case. The total exposure to loss on a single case could well run to more than the estimated legal cost of £250k which itself is a very crude estimate. However, it is hoped that the majority of residents (of which there are 160 at least) would seek to contribute to a fighting fund, first by way of pledge/letter of intent and then by legally binding commitment. Spread across many members, the cost to each individual household would be kept to a very manageable sum. It is possible, of course, that certain households would be willing to pledge disproportionately large sums.

It is not our intention at this stage to establish some kind of pledge pool. Rather, we believe residents would look at the details around each and any case presented by the WRA before deciding whether they would commit to help funding a legal action. However, we did want to remind everyone as to the process and we do view ongoing membership of the WRA as an expression of support for the WRA's role statements and so an implicit expression of support, to one degree or another, to participate with all WRA members, and other Estate residents, in legal action to protect the restrictive covenants.

Just as the majority of residents on the estate choose to be members of the WRA and to support its activities as laid out in the role statement, it is to be hoped that the majority of members, and even residents who are non-members, would be prepared to support actions to preserve the covenants. The WRA is not merely a neighbourhood support body and a voice in the planning debate

around the preservation of the conservation area. It is easy to see how the preservation of the covenants and the conservation area actually sit very neatly alongside each other as priorities for our role. The WRA exists to preserve the covenants, preserve the conservation area and, with the support of our members, ensure strong enforcement to protect the special and unique character of our estate.

David Knox

12-2-2020