

19th July 2018

Mrs Clare Cotterell
Parish Clerk Abbots Ann Parish Council
c/o Homeleigh
Jacks Bush
Lopcombe Salisbury
SP5 1BZ

Dear Clare,

Thank you again for putting my 29th June letter on the agenda for the PC meeting on 5th July.

I am writing (a) with respect to your draft minute of that meeting and (b) to respond to the questions Cllr Hayter asked of the PCC in the meeting. Accordingly, I ask that this letter be included in the agenda for the next meeting of the PC.

First, the minutes. The PCC had never been asked for expert opinion (see draft minutes of PC BGC meeting on 24/1/18). In the meeting on 5th July Cllr Hayter asked for expert opinion and lay evidence as to the disrepair of the paths in the churchyard. I said that the quote and specifications he had received should be all the expert evidence the PC needed and now that I knew what the PC wanted I would report back to the PCC. I was not in a position to promise anything more and did not. I ask that the draft minutes at 9b be amended accordingly.

Second, as to Cllr Hayter's statements and questions.

- 1) Pursuant to section 215 of the Local Government Act 1972, and as Cllr Hayter acknowledged, the PC is liable to maintain the churchyard by keeping it in decent condition and its walls and fences in good repair. How the PC carries out that duty is entirely a matter for the PC: it is not for the PCC to determine what needs to be done or to assess the risks posed by failure to fulfil that obligation. Indeed, I was surprised to note from the agenda for the 5th July meeting that the annual safety inspection report received by the PC was limited to the play area and to hear from Cllr Hayter that the PC relies on his personal view that the state of the churchyard paths was such that repair was not a priority given the current budget cuts. We suspect that would cause any insurer to refuse to indemnify the PC against any claim resulting from disrepair of the churchyard paths.
- 2) Furthermore, the PC's obligation is both positive and regardless of funds. I refer to paragraph 12 of the January 2007 advice of the Legal Advisory Committee of the General Synod: "The recent decision in *Lydbrook Parochial Church Council v Forest of Dean District Council* (heard in Gloucester County Court before District Judge Thomas in December 2003 and noted at (2004) 7 Ecc LJ 495), reinforces the legal position that the duty is one of substantive maintenance and not merely management of decline (see generally *R v Burial Board of Bishopwearmouth* (1879) 5 QBD 67 at 68) nor is it conditional on adequate funds being available." And I note that the PC's Internal Auditor's recent report advised the PC that it was holding excessive reserve funds.

- 3) In his Quinquennial report of his inspection of 7th Oct 16, the PCC's architect recommended at 2.55 that the footpaths be restored - a category C action for completion before the next inspection.
- 4) The Rev Katrina Dykes provided the PC with pictorial evidence of the state of the footpaths, asking what was happening, and the matter was merely passed on to the next meeting of the BGC.
- 5) The state of the paths has for too long been such that the funeral bier cannot be used safely. That of itself demonstrates clearly that the PC has failed in its obligation under section 215.
- 6) Casual observation shows that both paths are significantly overgrown, i.e. not in decent condition as required by section 215.
- 7) For many years we managed happily, and we wish to continue, with gateways in the church path fence as they are at present, i.e.
 - a. at the eastern gate, from hinge-post to latch approx. 1.35m leaving an opening of 1.25m and
 - b. at the western gate, from hinge-post to latch approx. 1.65m leaving an opening of 1.55m.
- 8) We are still seeking a tender for the WC that we can afford, so that we cannot say if or when the work will be carried out. However, a term of any contract for the work will be that the contractor makes good any damage including damage to the churchyard paths.

In conclusion, we urge the PC to comply with its statutory obligation and treat restoration of the churchyard paths as the priority it is.

Yours sincerely,

Graham Platford

Chairman, Abbots Ann Parochial Church Council Fabric Committee