

**MINUTES OF AN EXTRAORDINARY MEETING OF ABERTILLERY AND LLANHILLETH
COMMUNITY COUNCIL (ALCC) HELD ON 18 NOVEMBER 2019 at 7.00pm
in the Council Chamber, Mitre Street, Abertillery**

PRESENT: Councillors:

Gill Clark (Chair), Peter Adamson, Michaela Assiratti, Keri Bidgood, Roger Clark, Tracey Dyson, Julie Holt, Mark Lewis, Beverley Lucas, Perry Morgan, Gary Oakley, Rob Phillips, Tracy Postlethwaite, Allen Rees, Nick Simmons, Glyn Smith and Graham White

Officers: Richard Gwinnell, Town Clerk and Steve Edwards, Deputy Clerk

Others: None

ABSENT: Councillor Bernard Wall

116. APOLOGIES FOR ABSENCE AND WELCOMES

No apologies for absence were received.

117. DECLARATIONS OF INTEREST

No members declared any personal interests.

118. SOLAR FARM GRANTS CRITERIA

The Chair reminded members that they were here principally to discuss and clarify the meaning of criterion 17 of the Solar Farm Grants criteria (adopted by the Council on 25 September 2019) which read:

“The Council will not give Solar Farm Grants to the same organisation(s) within five consecutive years unless in exceptional circumstances”.

They were also here to agree the process of decision making going forward and consider the special motion submitted, to rescind two previous decisions about the process.

The Clerk circulated paper copies of the legal advice received from a National Association of Local Councils (NALC) solicitor on 14 November 2019. This had been circulated to all members by email on 14 November 2019. The NALC advice is set out below:

*Client: Abertillery and Llanhilleth Community Council
Subject Matter: Solar Farm Grant application criteria*

I have been allocated this request to advise upon and I have seen your email dated 7 November 2019 together with an email dated 6 November 2019 from the Community Clerk attaching a copy of the Minutes of the Community Council meeting on 25 September 2019 with the documents referred to in Council Minute 77 and related documents in respect of Ward and Council Grants.

The issue in this request is the true meaning of criterion 17 in the Solar Farm Grants Scheme which prohibits grants to organisations that have had a grant from the scheme in the previous five years unless there are exceptional circumstances.

The main question is whether the five year restriction applies only from its adoption at the meeting on 25 September 2019 or to all grants made under the scheme since it started in 2017.

The simple answer is that criterion 17 is the Community Council's criterion and it means whatever it wants it to mean. The question is what did the Community Council intend to be the start date for that criterion when it adopted it? The reality is that the Community Council may not have considered that point at all at the time and therefore needs to decide and clarify the issue now.

I note that the Community Clerk made the point that new laws are not retrospective and this is because it is believed to be unfair to make something wrong now which was not wrong when it was actually done. The Council needs to decide whether making criterion 17 retrospective would be unfair on groups who applied for grants previously without knowing that this would ban them from making further applications for five years from 2019. For example a group that applied in 2017 might have also applied in 2018 if it knew that the criteria were going to change in 2019 and freeze them out until 2022. If that situation arose there is a possibility that the group affected could take Judicial Review proceedings against the Council on the basis that making the criterion retrospective was irrational.

Once the Council has decided what the wording adopted actually means then it needs to publicise its decision. There is no need for the resolution that adopted the new criteria to be revoked if the Council is simply clarifying when the first five year period will start and this should be set out in a resolution of the Council at a full meeting.

If the Council decides that it wishes to amend the overall criteria by removing or altering criterion 17 this can be done by ordinary resolution as the Council is not revoking a previous decision and it is able to modify its existing criteria from time to time.

Whenever the new criteria come into effect the Council needs to set up and publicise a procedure for a group to show exceptional circumstances if it intends to apply within five years of a previous grant.

I hope that this clarifies the position but if the council requires any further information or advice please contact NALC again.

The Chair gave members a few minutes to read the NALC advice. All members confirmed that they had read it.

The Clerk circulated paper copies of his advice (which was supplemental to the NALC legal advice). The Clerk read aloud his advice as follows:

- 1. The Council would be very unwise to apply the new 5-year rule (adopted on 25 September 2019) to have the effect of excluding any organisation which received a solar farm grant from ALCC prior to 25 September 2019.*
- 2. Doing so may lead to Judicial Review from an organisation so affected. This is a significant risk to the public purse.*
- 3. The Council can amend or clarify its criteria without rescinding the previous decisions to adopt those criteria (on 25 September 2019).*
- 4. The Council would be wise to clarify at this meeting that the new 5-year rule applies from the 2019 round of funding (i.e. from the date on which solar farm grants are awarded in December 2019).*

5. *No group should have been told not to apply. If they read the criteria and decided for themselves not to apply (e.g. because their project does not meet other criteria), this was a choice for them to make.*
6. *The 5-year rule allows for exceptional circumstances, so every group should have an opportunity to apply and to demonstrate if they have exceptional circumstances, and for the Council to consider those circumstances.*
7. *Two groups were told by a councillor that they could not apply.*
8. *They may take legal action against the councillor concerned or against the Council if they are not now given an opportunity to apply.*
9. *They should therefore now be given the opportunity to apply.*
10. *If any other group did not apply, because of an incorrect interpretation of the new 5-year rule, they should also now have the opportunity to apply.*
11. *That opportunity should be equal to the opportunity given to other groups in the past (e.g. a two-week deadline).*
12. *The Council should therefore re-advertise (on 19 November 2019) the opportunity to apply, in the same way as it did previously, via its website and via councillors going to speak to groups. Monday 2 December (applications to councillors) and Tuesday 3 December (applications from councillors to the Clerk) could be the relevant deadlines.*
13. *The Council should consider all applications on their merits, against the criteria it has adopted.*
14. *There is insufficient time for the Solar Farm Grant Working Group to consider the applications first and this would be duplicated effort.*
15. *The Council could if it wishes meet on Tuesday 10 December 2019 (earliest) (assumes papers go out on Wednesday 4 December 2019) to consider the applications and decide which organisation(s) should receive a grant. Does it want to allow for presentations? If so, how long for each?*
16. *Deciding on 10 December will theoretically give time to forward the Council's chosen project(s) to the solar farm company, to obtain their approval to allocating the funding to ALCC, to grant for those project(s), before the Christmas break.*

The Council considered the following issues in the order shown below.

5-year rule

The following is a summary of the main questions (Qs) asked by councillors and answers (A) given by the Clerk:

- Q: What if a group did not apply in October (because they understood the 5-year rule to mean that they could not apply, because they had received a grant within the last 5 years), then the Council decided in November to apply the 5-year rule from 2019, and that group realised months later (that they could have applied after all)? Might they then claim against the Council for changing the rules?
- A: Clarifying that the new rule starts in 2019, when it was adopted, and re-advertising to enable other groups to apply within a further two weeks (i.e. the same length of time other groups had been given already) was the most reasonable approach and the least likely to be challenged (as everyone would then know what the rule meant and everyone would have had an equal opportunity to apply for a grant). This was not about changing the rules; it was about the Council clarifying the start date of the new 5-year rule, as different people had different interpretations of the new rule.
- Q: Why was this issue being discussed again? The new criteria had been adopted in September and should not be changed now.

- A: This issue was on the agenda again as Council had not made any decisions about allocating solar farm grants yet, time was running out, and Council had asked at its last meeting for legal advice on the 5-year rule. That advice had now been received and was being reported back, as Council had requested.
- Q: Was it proposed that Council “go back on” the September decisions?
- A: No. This was only about clarifying or changing criterion 17 (the new 5-year rule) and adapting the decision-making process and timescales, to reflect any changes agreed by Council and take account of the delays which had already occurred.

Various members commented (on both sides of the debate):

- the new 5-year rule was adopted in September 2019
- Council made a mistake in not being clear at the time about the start date
- the new 5-year rule could only be applicable from when it was adopted
- applying it to exclude organisations who received grants in 2017 was unfair
- the safest way was to apply the rule from when solar farm grants started in 2017
- several people had read it that way already, including a recent complainant and some potential applicants
- Councillor Oakley stated that he had told two groups not to apply, because of the 5-year rule
- it did not seem fair that (hypothetically) a group which received a grant 4.5 years ago could not have a grant until another 6 months had passed
- the 5-year rule had been adopted and it allowed for exceptional circumstances
- all groups should have been encouraged to apply
- the Council was not breaking any laws by applying the new rule to past years
- one group had already received a solar farm grant in 2017 and 2018
- this proved that the Council never intended to backdate the new 5-year rule
- the Clerk had advised Council correctly
- the legal advice received showed that the Clerk’s advice was correct
- there should not be a 5-year rule at all; this limited the choices available
- previous decisions should not be rescinded
- applications could be considered under the “exceptional circumstances” clause, even if the 5-year rule was backdated
- solar farm grants were for “legacy” projects; they were exceptional by nature
- the 5-year rule had been intended to ensure the 5 wards had a fair annual share
- all 8 applications received to date could be considered, even with the 5-year rule
- the email from Councillor Morgan dated 14 October 2019 had caused this problem
- the Council could not agree rules and then change them halfway through the process; this was like changing the rules during a game of football, when your side was losing
- the new rule had to be applied consistently from when it was adopted, not before.

Councillor Dyson moved: that Council abide by the Clerk’s advice and stages 1 to 16 above be adopted.

Councillor Phillips moved an amendment: that the Council stick to the original wording of the 5-year rule, apply it from when solar farm grants started in 2017 and consider the 8 applications already received, without re-advertising.

The Clerk sought clarity on the meaning of the amendment, which Councillor Phillips gave. The Clerk asked Councillor Phillips and others if they understood the risks of challenge which he had outlined and which the legal advice from NALC referred to.

Councillor Phillips and other members confirmed that they did understand the risks.

Councillor Simmons moved a further amendment: that the Council review the 5-year rule next year, after the first year of operation.

The Chair put the first amendment (from Councillor Phillips) to the vote.

With 9 members voting in favour:

Council RESOLVED:

(1) that the Council stick to the original wording of the 5-year rule, apply it from when solar farm grants started in 2017 and consider the 8 applications already received, without re-advertising.

8 Councillors (Michaela Assiratti, Keri Bidgood, Gill Clark, Roger Clark, Tracey Dyson, Julie Holt, Beverley Lucas and Tracy Postlethwaite) asked for their votes against the amendment to be recorded.

The Chair asked the Clerk if members would be covered by the Council's indemnity insurance if they failed to follow the Clerk's advice and the external legal advice received. The Clerk stated that he did not have the wording of the insurance policy in front of him. However, he and the Deputy Clerk reminded members that they had been advised by One Voice Wales during training previously that, if they failed to follow officer advice or legal advice, they were unlikely to be covered by the Council's indemnity insurance.

Various members commented further (on both sides of the debate):

- applying the 5-year rule now and excluding historical grant recipients, then reviewing that decision again next year (and possibly re-allowing them) made no sense at all
- this would make the problem worse, not better
- the legal advice said whatever Council wanted it to say
- it said the Council could do whatever it wanted to do
- the Council did not have to give grants; it was a discretion to do so, or not.

Councillor Simmons withdrew his earlier amendment.

Special Motion to Rescind Council Decisions 77 (3) and (4)

The Clerk answered questions from various members:

- as he had advised already; the 8 applications would have to come to the full Council for final decisions to be made, as the working group could not have decision-making powers delegated to it
- having the applications considered twice (by the Solar Farm Grant Working Group (SFGWG) and then the Council) was not necessary
- Council had decided that the SFGWG should consider the applications first
- decisions 77 (3) and (4) would need to be rescinded, if that was not going to happen
- taking the grant applications to the working group and then to the Council would be a duplication of effort and time
- time was short, as the solar farm company had set a 15 December deadline
- Councillors Adamson, Gill Clark, Dyson, Lucas, Rees and Morgan had supported

various of the applications for solar farm grants this year

- Councillors Adamson, Gill Clark, Morgan, Oakley and Phillips were on the SFGWG
- some members of the working group may choose to declare interests and leave the meeting room, reducing the number of members left to consider the applications
- this could be a problem, with only 5 people on the working group
- it would be less of a problem at full Council, which consisted of 18 members.

Various members commented (on both sides of the debate):

- only (up to) 4 applications would need to come to the full Council
 - working groups were designed to reduce the workload of Council meetings
 - the working group could shortlist, removing “options” before the Council meeting
 - this was not public money, so members would not have to declare interests
 - if a councillor brought in an application from a community group, this did not mean the councillor supported the application or had a personal interest in it
 - the criteria adopted by the Council on 25 September made clear that an application could only be submitted if it had the prior support of the councillor who submitted it; this implied they would have a personal interest and had pre-determined it
 - the working group would not make the final decisions, so members would not have to declare interests at the working group
 - submitting an application on behalf of an organisation was not the same as being a member of that organisation
 - this was a “perversion” of the Member Code of Conduct
 - many people were members of a Facebook group; did this constitute a personal interest?
 - no; thousands of people could like or join a Facebook group, but not be a member of the organisation which was responsible for that Facebook group
 - a member need not be a member of a community group, but could nevertheless be biased to approve their application over others and therefore should leave the room
 - just because a councillor was not a member of an applying organisation, did not mean they need not declare a personal interest
 - the key test was “how would the public perceive it”?
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- if the public perceived that a councillor was biased, due to their connections with a community group, then that councillor should declare a prejudicial interest and leave
 - a councillor only needed to declare an interest if they were a member or an officer of a particular body; not a supporter (of a football club for example)
 - councillors had declared interests and left the room in similar circumstances in the past
 - all applications could go to the Council, with the working group’s recommendations
 - organisations applying for grants may struggle to attend daytime meetings, to present their case.

The Clerk emphasised several times during the debate that councillors were responsible for deciding if they had personal interests. They were also responsible for declaring them. He could not tell members what to do. Members were responsible under the Member Code of Conduct and were accountable for their actions, including to the Public Services Ombudsman for Wales. Members would be wise to err on the side of caution. Statements that councillors did not have an interest because the solar farm funding was not “public money” or because the SFGWG was “only a working group” were not correct. The Code of Conduct was clear; members had to declare interests if they existed, whenever they were meeting to conduct Council business. The solar farm funding was being given to ALCC, for

ALCC to give to community groups, so this was Council business, and members should declare personal interests, if they felt they had personal interests.

The special motion which had been submitted by Councillors Assiratti, Bidgood, Roger Clark, Dyson, Holt and Lucas: "that we reverse the decisions 77 (3) and (4) made in September 2019, for the solar farm application" was moved and put to the vote.

With 8 members voting in favour and 9 against, the motion was declared lost.

Grant applications – decision making process

The Clerk explained that, as Council had now decided not to re-advertise for applications from other organisations, and not to rescind the previous decisions, there was time for the SFGWG to meet to consider the 8 applications already received, before those applications were submitted to the Council (with the working group's recommendations). A meeting of the working group could take place on the same day as the Council meeting, if members wished, or earlier. He had spoken to the Project Manager at the solar farm company today and they would be willing to extend the 15 December deadline, as long as funds were issued by 20 December 2019. Further to questions posed by the Clerk about the process:

Council RESOLVED that:

- (2) the Solar Farm Grant Working Group meet on 4 December at 6pm
- (3) applicants be invited to present their applications at the working group meeting, for up to 15 minutes each per applicant
- (4) the Council does not require presentations on the applications
- (5) the Council considers the 8 applications already received (along with the working group's recommendations) on 11 December 2019
- (6) other agenda items for Council on 11 December be kept to a minimum.

Various members commented that:

- they were "disgusted" that the majority of councillors had gone against the Clerk's advice
- officers advised members, to protect members and prevent bad decisions
- the One Voice Wales training was very clear; councillors should not make decisions which were against officer advice.

Councillors Michaela Assiratti, Keri Bidgood, Tracey Dyson and Beverley Lucas asked for their names to be recorded as the members who expressed the above views.

The meeting ended at 8.20pm.

Signed as a correct record by the Chair

NB these minutes are a summary of the proceedings and record of the decisions taken. They

are not intended to be a verbatim record.

Minutes produced by Richard Gwinnell, Town Clerk