

PARISH COUNCIL MEETING

Held on Thursday 27th March 2025, commencing at 7.30 pm. in the Village Hall.

Full reports and supporting documents can be found on the Parish Council website under Meetings, March 2025

Present:

Chair: Cllr Janice Muckian. Cllrs: Alison Bourne, Frank Domoney, Lizzie Falconer, Roy Mawford, Irene Mitchell, Mary Morrey, Jane Ranzetta and Michael Sherman. Five members of the public were present.

Opening Statement by the Chair:

The Chair began by welcoming everyone to this additional meeting and introduced herself asking the Clerk to move straight to Absences, Declarations of Interest and Requests for Dispensations.

1. Apologies and approval of Absences

The Clerk reported that Cllrs Lamont and Robinson were not present and had sent their apologies. Cllr Ranzetta had explained that she might be late and joined the meeting at 7.40pm.

2. Declarations of Interest

None.

3. Requests for Dispensations

The Clerk reported that he had received no further requests for dispensations.

Statement by the Chair

The Chair explained that this meeting was being held as the Parish Council has received complex and wide ranging Subject Access Requests from two individuals.

The Chair explained that Council meetings are usually recorded for the purpose of minute taking only and reminded Councillors that some Members of the Public have in the past requested copies of those recordings.

The Chair told Councillors that it is a legal requirement that Council not reveal the identity of the individuals who submitted these requests and it was therefore essential, while these requests were discussed, that Councillors who may know, or suspect, their identities make every effort to avoid inadvertently revealing their names. She emphasised that should the identity of the requestors be inadvertently revealed during the recording, that portion of the recording will be redacted.

She reiterated a plea that Councillors and the Clerk make every effort to ensure that the requesters are not identified.

The Chair then asked Council to consider, in order to minimise the likelihood of this happening, that agenda item 6 be broken into two parts with Council asked to consider a motion to exclude the Public from the second part.

Part 1: The Clerk will introduce the item, giving such detail as is possible, with an estimate of costs that could be incurred. This will then be followed by a Question-and-Answer session when Councillors will be invited to ask the Clerk questions. The answers to these questions not be debated at this point.

Part 2: The public are excluded during Council's deliberations should that have been agreed by a motion. The recording of the meeting is paused during these deliberations. The minutes of the meeting will record the outcome of Council's decision, but not the details of the debate.



4. Public Participation Session

The Chair told Members of the Public that to protect the confidentiality of the requesters they needed to word any questions or statements regarding tonight's agenda carefully. She reminded Members of the Public that the next scheduled meeting is in seven days' time.

She explained that anyone wishing to ask a question or make a statement has three minutes each with the Standing Orders of the Council clear that this public participation session is for ten minutes and that it is at the discretion of the Chair whether further time is allowed.

A Member of the Public said that in her experience Subject Access Requests are unusual at Parish Council level and asked if Babergh Council had been asked for help. She said that having read the information on the ICO website it was her opinion that the Council needed to make sure that its decisions were correct as incorrect decisions would have far-reaching consequences. She described the situation as dreadful, saying that in her opinion the money had to be spent to prevent vexatious requests and fishing expeditions being made. She said that Parish Councillors must be able to freely debate all matters that come before the Council and that in future, other members of the community must feel able to step up and fill vacancies as and when they arise.

She concluded saying that, in her opinion, being a Parish Councillor currently looked like a poisoned chalice and that she had come to Council tonight to applaud the Councillors and Clerk for their stoicism in the face of what she considered to be a constant and very personal attack.

5. Chairman's Announcements

The Chair proposed a motion to exclude the Press and Public from the second part of item 6 i.e. Council's deliberations, to ensure that the identity of the individuals who have made Subject Access Requests is not inadvertently revealed in public

Proposed: Cllr Mawford

Seconded: Cllr Morrey

Decision: Approved. Cllrs Domoney and Sherman voted against.

6. Legal Advice concerning two complex and wide-ranging Subject Access Requests received Saturday March 8th 2025

Part 1

The Clerk explained that these are 'Subject Access Requests' not 'Freedom of Information Act requests.

Freedom of Information Act requests, he said, essentially ask questions or seek access to Council records concerning a matter.

Examples of these might be 'how much does the Parish Council spend on streetlighting?' or 'please provide the recording of last night's meeting of Council' or 'please share all correspondence with Suffolk Highways concerning the proposed 20mph scheme'. He characterized such requests as generally not difficult to answer.

A Subject Access Request, he said, is more complex because it seeks all the personal data held by the Council concerning the requestor. Council has only had one previous Subject Access Request before these two and the nature of that query had not presented any particular difficulties.

He reminded Councillors that these two Subject Access requests are for:

'All records, emails, letters, text messages (including WhatsApp) and private phones and emails' relating to the requestors, for a substantial period of time.

He reminded Councillors that in the email sent to them informing them of this meeting they had been made aware of a number of the legal and administrative issues and so at this meeting he would draw attention only to a small number of these issues:



Issues the Clerk drew to Councillors attention:

- a) **To what extent Council must demand and attempt to enforce Councillors, as requested, to conscientiously search their own private emails and other messages such as text and WhatsApp messages and the likely legal consequences considering the past reactions of the ICO of any non-compliance by Councillors, for both the individual Councillors and the Council.** He said that is clear in the ICO guidance that Information relating to the official business of the Council that is held in personal email accounts is caught. He reminded Councillors that their own Communications Policy also makes this clear.
- b) Whether the Information Commissioner Office (ICO) is likely to take a different view concerning compliance with the private elements of these requests in respect of those Councillors who have at periods clearly being using their private email accounts for Council business. The rules in this area, were he said, designed to stop an organisation attempting to circumvent disclosure rules by using outside the organisation email accounts.
- c) There are exemptions under the Act. For example it appears that a Monitoring Officer (such as the Babergh Monitoring Officer) is exempt from any obligation to respond to SAR requests but it is unclear whether correspondence between us all and the Monitoring Officer is exempt or can be fully redacted. It is also the case that a request which is 'manifestly unfounded or excessive' can be refused. In his opinion these requests are unlikely to be held as such but professional advisors might have a different opinion. Should Council incorrectly determine that the requests were 'manifestly unfounded or excessive' then the Clerk and Council would have committed a criminal offence.
- d) **Council will need to redact (i.e. black out) all the supplied items to protect the personal data of other people (Councillors, Members of the Public and others) none of whom have given consent for their personal data to be shared. He explained the complexity of this process.**

The Clerk then detailed the work he had done on these Subject Access Requests to date:

He had utilised the helpline offered by the Information Commissioners Office. Calls to this line, he said, are normally terminated after about thirty minutes. This service, he explained, points callers to the legislation but does not advise. To advise would put the ICO in the position of assessing the quality of its own advice. He described the service as 'helpful but unhelpful'.

He had asked Babergh District Council Legal Department as our 'mother council' whether it could help, it said it could not.

He had spoken, at no cost, with three firms of Solicitors. Those conversations were generally each of about 45 minutes length. Council policy is clear that three quotes must be obtained for amounts of greater than £1,000.

- a) Quote A: a fee of between £3,500 and £5,000 to include both a high-level guidance note and review of the relevant documents.
- b) Quote B: he described this as much more detailed and therefore much more helpful, with an estimate of approximately £1,500 for the preparation of an advice note (including a later follow-up conversation) and £2,000 to £3,000 for managing the request for us. They had explained that they generally set up a secure, online HighQ data room into which we upload all documents for potential disclosure, which they will then review, filter and redact. In addition, they would prepare a covering letter to accompany the provision of the disclosable data to x and x which would contain all formalities required by Article 15 of the retained GDPR. Estimated total £4,500.
- c) Quote C: £1,500 for advice regarding how to undertake the search for the requestors' personal data and other matters to consider at the outset. The solicitor then quoted for ongoing support in relation to the DSARs such as drafting any communication to the requestors; to answer any queries we may have in relation to the ongoing search; and to assist in communication with other Council Members suggesting a budget for this of £2,950- £4,950. To undertake the DSARs and apply the various exemptions and redactions to documents this would likely cost in excess of £5,000. This estimate will depend on how many documents are produced by the search. Estimated total £11,000.

He emphasised that all firms have made it very clear these are their best estimates, final costs may be higher should the matter be more complicated or the number of documents higher than anticipated.



The Chair invited Councillors to ask questions explaining that she would begin with a small number to get the session started.

The Chair asked how many documents might be in scope. The Clerk replied that he had done a quick search of his own correspondence and he anticipated that 2,000 of his emails would fall into scope. He added that he did not know how many emails between Councillors which he had not been copied into existed and that he had no idea of the number of private messages.

The Chair asked how the Clerk, should he be requested by Council to do the redaction work himself, would ensure that the redactions were correct and how long the task might take. The Clerk replied that the task would be almost impossible. He explained that should he attempt to redact them at a possible speed of one every five minutes the task would take 200 hours meaning he would do almost no work for several months. He said that equally worrying, should he redact over-aggressively a criminal offence would have been committed and redaction with insufficient vigilance would probably lead to a data breach, requiring Council to report itself to the ICO. He described doing the redactions properly as a skill he did not have. He informed Councillors that the Requestors had been clear with him that they have engaged Solicitors to review the output of the Subject Access Requests.

Cllr Ranzetta asked if the 'substantial period of time' was known. The Clerk responded that it was known, he had obscured this to avoid identifying the Requestors. She asked that since Councillors were not Employees what difference that makes. The Clerk explained that he had asked the lawyers that question. He explained that clearly Councillors could not be 'fired' as Employees can be, but that it was almost certainly within the Clerks powers to ask the IT Provider to open the .gov email accounts (but that this right needed to be clarified before the IT Provider was even approached) and almost certainly the duty of the Clerk to request Councillors to co-operate with respect to disclosure of privately held materials. A lawyer would advise what the form this request should take and the likely consequences for the Council and the Councillor should Councillors refuse this privately held information.

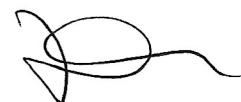
Cllr Sherman said that he had spoken to the ICO for two hours and that the ICO had told him that he was under no obligation to provide his privately held data due to GDPR. The Clerk admired Cllr Sherman's ability to keep the ICO helpline talking and explained to Cllr Sherman that almost certainly he would not be asked to turn his private accounts over to the Clerk but instead the Clerk would ask Cllr Sherman to search his accounts for the key words. Cllr Sherman said that the Requestors would need to obtain a Court Order to access his private emails. The Clerk responded that the PC needed to be sure i.e. by having obtained legal advice before making any such assertion to the Requestors.

Cllr Falconer asked what the financial implications of obtaining legal advice might be and whether costs could be recouped from the Requestors should Council in the end be found 'to have not done anything wrong'. The Clerk responded that ultimately these costs will be paid by Council Tax payers in this Parish either in reduction of services, failure to improve village infrastructure or increases in Council Tax. The Clerk detailed recent savings made by Council and the likely surplus this year and the cost headwinds faced by Council. There was he said no prospect of recovery of costs from the Requestors as they have not done anything wrong and are entitled to make their requests.

Cllr Mitchell asked how/why the volume of contacts was so high. The Clerk replied that these are people who correspond with Council the very most. Cllr Mitchell asked if these were disproportionate to the typical level of communications. The Clerk replied that he had such levels of correspondence with most people sitting around the table. Cllr Mitchell said that she now recognised that such volume was not untypical of those who engage/scrutinise Council.

Cllr Mitchell asked if these two individuals take a disproportionate amount of the Clerks time in the context that the Clerk serves 2,000 individuals. The Clerk replied that these individuals do take an amount of his time but that he was not prepared to say more than that.

Cllr Domoney asked what his financial exposure was should he tell the requestors to 'go forth and multiply' or as Cllr Sherman had suggested 'Go Get a Court Order'. The Clerk replied that was one of the questions he would ask the lawyers who would be able to advise what penalty the ICO could apply but also, in their experience, the likely sanction. He explained that with respect to emails on the .gov server it was certain that a large number of these would have to be supplied, the questions were to what extent they could be validly excluded and to what extent they could be redacted. He said that he was very aware that over-redaction, even if not illegal, was a bad look and likely to be challenged.



Cllr Mawford said that he read the ICO website and had noticed that extensions of time were possible should the matter be considered 'complex'. The Clerk replied that he had also read these sections and noted that the word 'complex' included an assessment of the organisation's resources. He said that only a lawyer could advise whether the PC resources should be regarded as being it's one employee or all the funds available to it which it is able to top up by increasing Council Tax.

Cllr Ranzetta asked if Council has any rights over the information handed over. The Clerk replied that Council does not.

Cllr Mitchell asked if the Clerk has to do this without legal assistance what the effect would be on Council activities over the next year. The Clerk explained that he would be ground down into an 'absolute pulp'. Meeting papers would cease to exist as currently known, there would be no accounts and no audit, it would be an emergency basis operation only. He added that even obtaining legal advice would not be a complete help to the clerk's workload as inevitably the lawyers ask questions.

Cllr Bourne asked if a delegation could be sent to persuade the requestors to drop the matter. Cllr Sherman said that such a conversation might be a matter for Part 2.

Cllr Domoney asked if there were Case Studies available. The Clerk replied that the ICO publishes its 'tellings off' of those who have failed to answer Subject Access Requests properly but not the many thousands of decisions it makes in favour of Organisations and so much of the useful information is not available. He explained also that 95% of these requests relate to Employment Disputes and not matters such as the one faced by the PC. Cllr Mitchell said that her research had led her to understand that many Councils do not respond on a timely basis but her research had not led her to anything that would help the PC.

At 8.35 pm Council moved to Part 2 and Members of the Public left the room.

The Chair reminded Councillors that this part of the meeting was not being recorded by the Clerk. She asked Councillors to not record this part of the meeting and told them that should they do so it such recording would be without the consent of other individuals present and sharing it with a third party without this consent could be deemed illegal.

She asked all Councillors to indicate that they are not recording this meeting and all Councillors so indicated.

Part 2

Councillors discussed the matters raised in Part 1.

The suggestion raised in Part 1 about a Councillor(s) mediating with the requestors was briefly discussed. A consensus was reached that such an approach would breach confidentiality and could not deliver any guarantee that a withdrawal of the requests would be of a permanent nature.

Through questions to the Clerk, Councillors heard about some key tasks not being delivered for the benefit of the community, due to the time the Clerk has devoted to corresponding with a very small number of individuals. Various views were expressed that assistance was urgently required.

Subsequent to those discussions Councillor Mitchell suggested an outline amendment to the motion, which after further discussion, read 'consequent of two wide-ranging and complex Subject Access Requests received in March 2025, the Clerk is given full discretion by the Council, with immediate effect, to obtain whatever legal advice he deems necessary to handle all Freedom of Information Act requests, Subject Access Requests and formal and informal complaints. The Clerk to report monthly, beginning at the May 1st 2025 meeting of Council, concerning the use of this discretionary power. This discretionary power to be reviewed by Council at its meeting to be held on Thursday August 7th 2025'.

Proposed: Cllr Ranzetta **Seconded:** Cllr Falconer
Decision: Approved unanimously




Motion: To obtain legal advice consequent of two wide-ranging and complex Subject Access Requests received in March 2025 and that the Clerk is given full discretion by the Council, with immediate effect, to obtain whatever legal advice he deems necessary to handle all Freedom of Information Act requests, Subject Access Requests and formal and informal complaints. The Clerk to report monthly, beginning at the May 1st 2025 meeting of Council, concerning the use of this discretionary power. This discretionary power to be reviewed by Council at its meeting to be held on Thursday August 7th 2025.

Proposed: Cllr Mitchell **Seconded:** Cllr Morrey

Decision: Approved unanimously

Note: The Local Government Act 1972, section 101, gives a Parish Council power to delegate decisions to an Executive Committee or the Parish Clerk, being the Council's Proper Officer.

Meeting closed 9.15pm

Janice Mockia

1/5/25