

Date:	05 August 2021
Title:	Report Item 4 - The General Power of Competence
By:	K Larkin, Parish Clerk/RFO
Purpose of Report:	To supply background information on the GPC with a view to the council formally adopting use of the power.
Recommendations:	1. To affirm that the council meets the criteria set out in the Localism Act 2011 for adoption of the General Power of Competence. 2. To resolve that the General Power of Competence be adopted with immediate effect

Background

1. Parish councils have traditionally operated under a patchwork of powers introduced by different pieces of legislation at different periods. Typically, if a council had no specific power to deal with a particular issue, its hands were tied. The one exception was Section 137 of the Local Government Act 1972, which allowed councils to spend money where they had no explicit power to do so, provided they could show that it would be for the benefit of a significant proportion of residents in their area. Expenditure under this heading is capped at an amount which is reviewed annually (£8.41 per elector in 2021/22, or approx. £12,304 in this parish).
2. The Localism Act 2011 for the first time gave eligible councils the power to do 'anything that individuals generally may do' (section 1(1)). An individual means an adult with full capacity. To give some examples, an individual could set up a company to provide a service; support a school; or invest in local businesses. These were things a council traditionally could not do. However, an individual cannot put someone in prison – and neither can a local council.
3. An eligible council is one which meets criteria determined by the Secretary of State (Localism Act 2011, s.8). The criteria are now set out in the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012. Basically, at least two thirds of the councillors must have been declared elected (EDFPC has seven out of nine); and the clerk must hold an appropriate qualification which covers the GPC (KL has the Certificate in Local Council Administration, with relevant updates). A council which meets these criteria can formally decide, at a meeting of full council, that it meets the criteria, and that it resolves to adopt the power. The resolution can be made at any time. The council must confirm that it meets the criteria at every annual meeting after ordinary elections (if it does). If eligibility is lost following an ordinary election (as opposed to a by-election), the council cannot start anything new under the GPC, and must go back to using specific powers and section 137.
4. Once the power is adopted, it is a power of first resort. It frees the council to act anywhere, not just in the parish, and with anyone, including individuals, provided it does not break other laws. The council becomes able to charge for its services, though it should not make a profit. It can

trade through a company or invest in an existing local company and receive a share dividend provided the primary purpose of the company is to support the local economy. The council must act 'reasonably' when using the power (the so-called Wednesbury rule, deriving from a judgement made in a court case in 1948).

5. The council will still use some of its old powers which allow it to do things an individual cannot do:
 - a. Raise a precept
 - b. Create byelaws (very rare due to the difficulty of meeting the criteria)
 - c. Issue fixed penalty notices (ditto)
6. However, there are boundaries to the General Power (Section 2 of the Act) and limits on charging (section 3) and on doing things for a commercial purpose (section 4). Where an activity is done for a commercial purpose, it must be done through a company, which must be structured in a manner approved for the purpose by the Department for Communities and Local Government.
7. One aspect of the GPC which has yet to be clarified by the courts is the extent to which a local council can use the power to duplicate or compete with statutory services which principal councils are obliged to provide (build and run a school? subsidise an ordinary public bus service?). The Clerks' Manual comments: 'We don't know yet exactly how far the General Power runs. The wording of the Localism Act is very wide, but the wording of sections 2 to 4 is seriously restrictive'.