

Stratfield Mortimer Parish Council

Full Council 18/05/2023

General Power of Competence

Agenda item 23/016 3:

- a. To confirm the council's eligibility, as defined in the Localism Act 2011 and SI 965 The Parish Councils General Power of Competence Order 2012, as having at least two thirds of its members duly elected, and by having a qualified Clerk.
- b. To resolve to exercise the General Power of Competence until the next relevant meeting.

BACKGROUND

The General Power of Competence (England only)

The GPC (Localism Act 2011 s1(1)) gives **eligible** local councils, "the power to do anything that individuals generally may do" as long as they don't break other laws.

It is a 'power of first resort'; this means that when a council wants to act, the first question to ask is whether an individual can do it.

From the following list, the only thing an individual can't organise is "Byelaws for common land":

- Road resurfacing
- Byelaws for common land
- Repair of sheep wash
- Build a new war memorial
- Meals on wheels
- Fencing a dangerous place in private ownership
- Wheelchairs
- Library
- Duckhouse

If a council had GPC and wanted to organise "Byelaws for common land" it would have to use the law on common land but an individual **can** set up or contribute to a charity providing an air ambulance or a mobile physiotherapy unit. An individual can organise a bottle bank or pay for a new war memorial on behalf of a community group. A health centre is usually a business set up by individual doctors and anyone can help by providing the building. If an individual can set up a charity or a company or make a donation to a project, then so can the local council using the GPC - as long as it isn't breaking any other laws (although trading through a company does remain controversial and advice should be sought). An individual might even pay for road repairs.

Freedom to act

The GPC gives the council considerable, but not total, freedom.

Using the GPC the council can:

- act anywhere and spend money on anyone, including individuals
- surprisingly, there is no need to prove community or council benefit.
- use the GPC **even** if there is another relevant or 'overlapping' power.
- the GPC can't be used to do anything illegal.

As with byelaws, there are things a council can do that an individual can't do (e.g. raise a precept or issue fixed penalty notices). In this case, you refer to the original legislation.

So, the GPC gives great scope for action, but there are restrictions and risks to bear in mind.

Restrictions

The council must comply with its statutory duties and procedural and financial requirements established by law. It must also follow any restrictions arising from overlapping legislation and other laws covering (for example) equality, health and safety, freedom of information, data protection and employment.

For example, in undertaking activities, the council must comply with legislation that requires it to:

ask permission before acting (eg from the Highways Authority)

organise licences or planning permission

attend to rules for health and safety or environmental health

treat people equally without discrimination

carry out its duties

set up a company or co-operative society and abide by company law if it wishes to trade (remember, this remains controversial).

Eg:

- Plant bulbs on a roadside verge - The council must ask permission from the Highways Authority
- Dig out an old pond - The council must consider the impact on biodiversity
- Use the village hall as a theatre - The council must organise licences
- Set up a restaurant in the community centre - The council complies with environmental health requirements
- Hold a Bonfire Night firework party - The council must pay attention to Health & Safety law
- Employ a wildlife ranger - The council complies with equality legislation

Several restrictions to consider may apply to each activity!

Overall

The aim of the GPC is to find innovative and cost-effective ways of providing services for the community. The council will be successful if it responds to the needs of the community. It should also remember that it risks its reputation if it acts without local support and without planning finances with care.

So, whenever the council wants to act:

Question 1 Can an individual do it?

Question 2 Are there any restrictions to be aware of?

Question 3 Does it have the money and community backing?

Of course, none of this is relevant if the council is not eligible to use the general power.

Eligibility

The freedom of the GPC is available to local councils that meet two criteria for eligibility (LA 2011s8) set out in a statutory instrument known as the Parish Councils General Power of Competence Prescribed Conditions Order Order 2012 No 965 that came into force in

The two criteria are:

- The council must have a qualified clerk
- Two thirds of the councillors must have stood for election

The qualified clerk

The clerk must hold at least one of the sector-specific qualifications. The sector-specific qualifications are The Certificate in Local Council Administration (CiLCA) or one of the higher education Local Council Administration qualifications.

Elected councillors

At the precise moment that the council resolves that it meets the criteria, the number of councillors elected at the last ordinary election, or at a subsequent bye-election, must equal or exceed two thirds of its total number of councillors (ie the number of seats on the council including those that are vacant).

Elected councillors include all councillors who stood for election whether or not the election was contested. Co-opted or appointed councillors do not count as they have not stood for election.

If two thirds is not a whole number, then it must be rounded up to the next whole number. For example, if there are 8 councillors and two thirds is just over 5, then the number of elected councillors must be 6.

A local council must decide, at a full meeting of the council, that it meets the criteria for eligibility at that particular moment. A resolution to this effect must be recorded clearly in the minutes. The council is required to make a new resolution at every relevant annual meeting of the council to confirm that it still meets the criteria if it does.

A 'relevant' annual meeting is the first annual meeting of the council after the ordinary election. This means that eligibility remains in place until the meeting after the elections even if the situation regarding the eligibility criteria has changed.