

**BRIDGNORTH TOWN COUNCIL  
TOWN COUNCIL MEETING  
18<sup>th</sup> May 2021**

LJ/2021

11<sup>th</sup> May 2021

REPORT TO TOWN COUNCILLORS

AGENDA ITEM 24 – General Power of Competence

AIM

1. To consider a recommendation to adopt the General Power of Competence

BACKGROUND

2. Local councils in England were given a ‘general power of competence’ (GPC) in the Localism Act 2011, sections 1 to 8. This report explains the freedom granted by the general power, the criteria to be met before a local council can use it and some restrictions on using the power.
3. Bridgnorth Town Council previously adopted the General Power of Competence in June 2017. To continue to use the power members will need to re-adopt the General Power of Competence at its annual meeting on 18th May 2021.

DISCUSSION/ COMMENT

General Information

4. Councils no longer need to ask whether they have a specific power to act. The GPC (LA 2011 s1(1)) gives local authorities, including 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 searching for a power to act, the first question you ask is whether you can use the GPC?
5. To find the answer, you ask whether an individual is normally permitted to act in the same way. For example:
  - a. An individual can’t put someone in prison – and neither can a local council (although, like an individual, the council can press for a prosecution).
  - b. An individual can’t impose taxes on other people – so a local council can’t use the GPC to raise taxes.
  - c. On the other hand, an individual could run a community shop or post office (provided they abide by relevant rules) – so a local council can do likewise;

can set up a company to provide a service. The GPC clearly permits a local council to engage in commercial activity as long as it sets up a company or co-operative society (s4) for this purpose.

- d. Sometimes a council can do things that an individual can't do – such as creating byelaws, raising a precept or issuing fixed penalty notices - but it must do so using the specific original legislation.
6. The GPC does not mean that the council can delegate decisions to individual councillors – this is a procedural matter that remains enshrined in law.
  7. The Government hopes that the GPC gives local councils confidence in their legal capacity to act for their communities. It encourages councils to use this power to work with others in providing cost-effective services and facilities in innovative ways to meet the needs of local people. The council can lend or invest money; it can trade; it can even sell energy to the National Grid.
  8. If another authority has a statutory duty, then it remains their duty to provide that service (eg education, waste collection, social services) but local councils can still help out. For example, a local council can support a school in many ways, just as an individual might. It could even help a community trust to run a local school.
  9. The council can undertake activities using the GPC anywhere – not just in the parish (s1(4a)). It isn't necessary to worry whether the activity is for the benefit of the council, the area or the community (s1(4c)) although, in practice, parishioners might object if they can't see the benefit! And unlike the Local Government Act 1972, s137, it doesn't matter whether there are any other specific powers permitting the council to take action (s1(5)). So, for example, a council can use the GPC to build a sports facility even though there is another power enabling it to do the same thing (Local Government (Miscellaneous Provisions) Act 1976 s19).
  10. As always, the council is expected to act in accordance with the general principle of 'reasonableness' established by the Wednesbury court case in 1948. The judgement made it clear that a council can exercise reasonable discretion when interpreting legislation provided that it justifies its decision in terms of relevant, rather than irrelevant, matters.
  11. The freedom of the GPC is available to local councils that meet two criteria for eligibility (LA 2011 s8) set out in a statutory instrument known as the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 that came into force in April 2012.
  12. A local council must decide, at a full meeting of the council, that it meets the criteria for eligibility at that particular point in time. A resolution to this effect must be written clearly in the minutes of that meeting.

13. The council is then required to revisit that decision and make a new resolution at every 'relevant' annual meeting of the council to confirm that it still meets the criteria (if it does). This means that eligibility remains in place until the first annual meeting of the council after the ordinary election even if the condition of the eligibility criteria has changed. A 'relevant' annual meeting is the annual meeting of the council after the ordinary election that normally takes place every four years. The confirmation does not have to take place every year.

#### Criteria for eligibility

14. The two criteria are:

a. Elected councillors:

- i. 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 by-election, must equal or exceed two thirds of its total number of councillors.
- ii. 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 are not elected.
- iii. The total number of councillors means the number of seats on the council including those that might be vacant. If two thirds is not a whole number, then it must be rounded up to the next whole number.

(Note: That as a result of the elections on 6<sup>th</sup> May Bridgnorth Town Council has 13 'elected councillors out of 16 positions, the number required is at least 11).

b. The qualified clerk

- i. The clerk must hold at least one of the sector-specific qualifications and should have completed the relevant training designed as part of the National Training Strategy for local councils. From April 2012, this training is undertaken as part of a clerk's preparation for one of the recognised sector-specific qualifications. Where a clerk studied for one of these qualifications before April 2012, they undertake the relevant training and must pass the short section 7 of CiLCA 2012 in order to be fully qualified for the purposes of the GPC (see below).
- ii. The recognised sector-specific qualifications are:
- iii. The Certificate in Local Council Administration (CiLCA) awarded by the Monitoring and Verification Board (or previously by the AQA)
- iv. The higher education qualifications for clerks awarded by the University of Gloucestershire or its predecessor institutions, namely:
- v. The Certificate of Higher Education in Local Council Administration
- vi. The Certificate of Higher Education in Local Policy
- vii. The first level of the Foundation Degree in Community Engagement and Governance (the Level Four course)

(Note: The current Town Clerk holds CiLCA)

15. Bridgnorth Town Council currently meets the criteria to adopt the GPC.
16. Since the GPC can be used for most of the activities of the council rather than for unusual one-off projects, the council cannot employ a clerk on a short-term contract specifically for using the power. If the council loses its qualified clerk or has insufficient elected councillors, then it must record its ineligibility at the next 'relevant' annual meeting of the council (after the ordinary election). If it has already started an activity under the GPC for which there is no other specific power, it remains eligible for the purpose of completing that activity, but it can't start anything new under the power until it is in a position to make the formal decision that it meets the criteria. The council must go back to identifying whether it has a specific power to act and use the restricted s137 if there is no appropriate specific power.

### Risks and restrictions limiting the GPC

17. There are some risks associated with using the GPC. Inadequate community support or insufficient funding are significant risks while there are several statutory or legal restrictions that a local council should consider before using the power.
18. Clerks and councillors should be aware of the following restrictions that potentially could limit the use of the GPC.
  - a. If a council is already subject to a statutory duty, then that duty remains in place. So, for example, a local council that is eligible to use the GPC must continue to abide by its duties. For example:
    - i. The council has a duty to act with regard to the likely effect on crime and disorder and to do all it can to prevent crime and disorder in its area (Crime and Disorder Act 2006 s17).
    - ii. The Natural Environment and Communities Act 2006 s40 imposes a duty on local councils to consider conserving biodiversity in exercising its functions.
    - iii. The Smallholding and Allotments Act 1908 s23(1) gives councils a duty to provide allotments if they are of the opinion that there is a demand for them.
19. There are also many procedural and financial duties that remain in place for regulating the governance of a local council. Furthermore, the council must comply with employment law, Health and Safety legislation, equality legislation and duties related to data protection and freedom of information for example: the council must set up a company or co-operative society if it wishes to trade. If the council sets up a company or co-operative society it must abide by company law. Councils are advised to refer to more detailed Government guidance on trading and on charging.

20. When entering into a contract under the GPC, a council should be cautious if the contract lasts beyond the next annual meeting when the council might no longer be eligible to use the GPC. There is a risk of legal action if the council ends the contract unexpectedly. It is wise to seek legal advice when setting up the contract.
21. The council can charge for services provided under the GPC.
22. If the council wants to invest in a local business to support the local economy, it should follow Government advice on investment (see links below). If it wishes to support a community enterprise, an economic development grant might be a sensible option.
23. If another authority has a statutory duty, then it remains their duty to provide that service (eg education). If you are worried that you might be encroaching on another authority's duty, then ask whether an individual, a private company or a community trust might be able to step in and help. If they can, then so can the local council (although it might need to set up an appropriate delivery body first).
24. If the action the council wishes to take is also covered by a specific power then any restrictions that apply to the overlapping power are still in force. So, if existing legislation requires the council to ask permission before acting, then it must do so. For example, the council asks permission from the Highways Authority before doing work on roadside verges.
25. The GPC is a power and not a source of money. It cannot be used to raise the precept and if loans are needed then normal procedures apply. The council can seek other sources of finance such as the Community Infrastructure Levy, grant funding, sponsorship, commercial activity and agreements with other authorities. As always, the council should ensure support from local taxpayers.
26. So councils cannot use the GPC primarily to raise money but they can receive income as a consequence of using the power for a different primary purpose. For example, a council could give financial assistance to a struggling local enterprise by purchasing share capital just as any individual could. Similarly, the council could lend money to support a local activity and earn interest on the loan and it can raise sponsorship for a community project.
27. Although councils are encouraged to be innovative, they should be aware of the risks involved in using the power in addition to a lack of money or community support. For example:
  - a. There is a risk of being challenged.
  - b. Trading activities could damage competing local activities.
  - c. The council risks its reputation and public money if a project goes wrong.

## SUMMARY

28. Bridgnorth Town Council currently meets the criteria to adopt the GPC (sufficient percentage of elected councillors and a qualified clerk).

29. Adopting the GPC is likely to be helpful to the Town Council in delivering services and benefit to the community.

## RECOMMENDATION(s)

30. It is recommended that the Town Council RESOLVES:

**To re- adopt the General Power of Competence.**



Lee Jakeman  
Town Clerk