

BICKLEIGH PARISH COUNCIL

The Council Office, The Woolwell Centre, Darklake Lane, Woolwell, PL6 7TR

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PROPOSED ADOPTION OF

THE GENERAL POWER OF COMPETENCE

INTRODUCTION

- 1.1 Local Councils, a collective term for community, neighbourhood, parish and town councils, are the first tier of Local Government.¹
- 1.2 Town and Parish Councils are corporate bodies, comprising of members who make collective decisions regarding the delivery of local services and improving amenities for the benefit of the community.
- 1.3 Parish Councils were formed in 1894. The powers and duties of Parish Council and Parish Meetings are defined in the Local Government Act 1894.²
- 1.4 In order to carry out its activities, Councils must determine whether it has the legal power to act.
- 1.5 The Good Councillors Guide 2018 lists a range of the discretionary powers, which have been passed by Acts of Parliament³, enabling Councils can carry out their functions. Some of the powers and functions specific to Bickleigh Parish Council are detailed below:

FUNCTION	POWER	LEGISLATION
Bus shelters - School Drive, Woolwell - Pick Pie Drive, Woolwell - Bickleigh	Power to provide and maintain shelters	Local Government (Miscellaneous Provision) Act 1953, s.4
Community Buildings - Funds have been awarded to The Woolwell Centre and Roborough Recreation Hall.	Power to provide and equip buildings for use of clubs having athletic, social or educational objectives Power to acquire, provide and furnish community buildings for public meetings and assemblies	Local Government Act 1972 (Miscellaneous Provisions) Act 1976 s. 19 Local Government Act 1972, s. 133
Highways - Roborough Green - The Green, Bickleigh - Roborough Village	Power to provide roadside seats and shelters	Parish Councils Act 1957, s. 1
Open Spaces	Power to acquire and maintain	Public health Act 1875, s. 164

¹ <https://www.nalc.gov.uk/about/who-we-are>

² <https://www.legislation.gov.uk/ukpga/Vict/56-57/73/part/I>

³ <https://www.parliament.uk/about/how/laws/acts/>

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- Roborough Green	land for public recreation Power to acquire and maintain land for open spaces	Open spaces act 1906, ss.9 and 10
The Woolwell Centre - Security Cameras	Power to spend money on crime detection and prevention measures	Local Government and Rating Act 1997, s. 31

- 1.6 In addition to specific powers, section 137 of the Local Government Act 1972 permits expenditure up to certain limits for “purposes not otherwise authorised”. Section 137 enables a local council to spend money on purposes for the direct benefit of its area, or part of its area, or all or some of its inhabitants. Typically, the expenditure on grants usually falls within S137. The expenditure has to benefit of the whole of the parish or part of it, grant aid an individual is not permitted. The expenditure is limited each year by a formula which multiplies the number of electors in the Parish by a set amount per parishioner. It has budget constraints and is a power of last resort.
- 1.7 Despite the range of powers available Parish Councils are at risk from being legally challenged.
- 1.8 In recognition of the unique position of councils, as locally elected bodies to act in the best interests of their communities, in March 2010 the Local Government Association introduced a Draft Local Government (Power of General Competence) Bill to Parliament.
- 1.9 **General Power of Competence** (GPC)⁴ was introduced by the Localism Act 2011 and took effect in February 2012. The Act gives councils the **power** to do anything an individual can do provided it is not prohibited by other legislation.⁵

LEGISLATIVE BACKGROUND

- 2.1 The General Power of Competence (GPC)⁶ replaced the Power of Well-being⁷
- 2.2 The Government included a “general power of competence” in the Localism Act 2011 (Part 1, Chapter 1, ss 1-8),. It was brought into force by SI 965 the Parish Councils (General Power of Competence) (Prescribed Conditions)⁸ Order 2012 in April 2012.
- 2.3 Subject to prescribed conditions the act gives Councils the power to do anything lawful an individual can do.
- 2.4 In 2013, in the publication Local Government Association publication titled ‘The General Power of Competence - Empowering councils to make a difference’, the LGA Chairman stated ‘*Giving more power to local councils to enable them to make changes locally is*

⁴ http://www.legislation.gov.uk/ukxi/2012/965/pdfs/ukxiem_20120965_en.pdf

⁵ <https://www.local.gov.uk/sites/default/files/documents/general-power-competence--0ac.pdf> - Local Government Association (LGA) – The General Power of Competence, Empowering Councils to make a difference. Page 6.

⁶ <http://www.legislation.gov.uk/ukxi/2012/965/contents/made>

⁷ <https://www.legislation.gov.uk/ukpga/2000/22/section/2>

⁸ The conditions prescribed for the purposes of section 8(2) of the Localism Act 2011 are those specified in the Schedule to this Order.

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vital if we are going to be able to design and deliver more efficient public services and help local areas innovate and, in particular, promote growth in their local area.'

- 2.5 The publication gives examples of how GPC is has been used:
- Crewkerne Town Council, in Somerset has taken over the running of youth clubs previously provided by Somerset County Council.
 - Sprowston Town Council acquired a former youth and community service building from Norfolk County Council which it is refurbishing to provide a multi-use community centre.

TYPES OF ACTIVITY

- 3.1 The council must ask itself if an individual is allowed to do it (is it lawful), if the answer is yes then a council is normally permitted to act in the same way.
- 3.2 Types of activity could include:
- Setting up a Company or co-operative society to trade and engage in commercial activity
 - Running a community shop or post office
 - Setting up a Company to provide a local service

RESTRICTIONS

- 4.1 The power does not allow local authorities to raise tax
- 4.2 **Trading restrictions:** If a council wishes to trade it must set up a company or co-operative society and abide by company law. The council can charge for services provided under the power.⁹
- 4.3 **Charges** made under the GPC may only be made for discretionary services and should be set at a level which simply recovers costs and does not generate a profit or surplus, which limits the ability of the power to raise additional revenue.
- 4.4 **Legal restrictions:** GPC does not expand authorities' powers to make byelaws or undertake enforcements
- 4.5 Whist councils are encouraged to be innovative; they should be aware of the risks of:
- Being challenged
 - Their trading activities damaging other local enterprises
 - Damage to the council's reputation and public money if a project or investment goes wrong.
- 4.6 Councillors should not seek what they can with the power but instead look at what they want to achieve and then see if GPC is a tool to help them achieve it.

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8311/133628.pdf

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- 4.7 Existing duties remain in place, such as having regard to the likely effect on crime and disorder, biodiversity and the duty to provide allotments.
- 4.8 Councils must continue to check there are no statutory prohibitions which prevent them from carrying out the activities.
- 4.9 Existing financial and procedural duties remain in place for regulating governance for example individual Council do not have the power to make decisions on their own. (Decisions are either delegated to an officer, a committee or made collectively by the Full Council).

LOCAL GOVERNMENT ACT 1972 – SECTION 137

- 5.1 Section 137 expenditure is limited. (see 1.6)
- 5.2 A council that is eligible to use the general power of competence can no longer use Section 137 as a power for taking action for the benefit of the area. However, Section 137 (3) which permits the council to contribute to UK charities, public sector funds and public appeals remains in place.

6 ELEGIBILITY

- 6.1 Two thirds or more of the councillors have been elected, rather than co-opted or appointed;
- 6.2 the clerk to the parish council holds:
 - the Certificate in Local Council Administration;
 - the Certificate of Higher Education in Local Policy;
 - the Certificate of Higher Education in Local Council Administration; or
 - the first level of the foundation degree in Community Engagement and Governance awarded by the University of Gloucestershire or its successor qualifications;
- 6.3 the clerk to the parish council has completed the relevant training (i.e. training in the exercise of the general power provided in accordance with the national training strategy for parish councils adopted by the National Association of Local Councils, as revised from time to time), unless such training was required for the purpose of obtaining one of the qualifications listed above.
- 6.4 The parish council must resolve at a meeting of the council and at each subsequent relevant annual meeting (i.e. an annual meeting taking place in a year of ordinary elections of parish councillors) that it meets the above conditions at the time the resolution is passed.
- 6.5 Once a resolution has been passed, a parish council remains eligible up until its next relevant annual meeting, whether or not the conditions relating to electoral mandate and

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qualified clerk continue to be met (compliance with these conditions is judged at the time a resolution is passed).

- 6.6 In summary, the criteria for qualifying to adopt GPC are resolution, electoral mandate and qualified Clerk.

Bickleigh Parish Council satisfies the conditions of General Power of Competence.

- All Councillors were elected in May 2019
- The Clerk obtained the Certificate in Local Council Administration, which included LOO7 (General Power of Competence) in October 2018.

7. RECOMMENDATION

- 7.1 It is recommended that Parish Councillors consider this report and pass the following resolution:

- 7.2 **“The Parish Council resolves from 30TH April 2020, until the next relevant Annual Meeting of the Council, that having met the conditions of eligibility as defined in the Localism Act 2011 and SI 965, The Parish Councils (General Power of Competence)(Prescribed Conditions) Order 2012, to adopt the General Power of Competence”.**