

## BROAD TOWN PARISH COUNCIL

### *Report of the Parish Clerk.*

#### **1. Purpose of Report**

This report proposes the adoption of the General Power of Competence.

#### **2. Background**

This report is to provide information to members which indicates the Parish Council's eligibility to meet the criteria set by the Secretary of State (Localism Act 2011, Section 8) for the Parish Council to adopt and use the General Power of Competence.

The General Power of Competence give the Parish Council, 'the power to do anything that individuals generally may do', as long as they do not break other laws. It is intended to be a power of first resort. The test is for the Parish Council to ask itself, is an individual allowed to do it? If the answer is yes, then the Parish Council is normally permitted to act in the same way.

The Parish Council could:-

- Lend or invest money
- It could set up a company or co-operative society to trade and engage in commercial activity
- It could run a community shop or post office
- The power is not restricted to the Parish, it can be used anywhere

Councils must act reasonably when using the power (the Wednesbury principles). There are also several statutory or legal restrictions that the Parish Council should consider before using the power.

There are also procedural financial duties that remain in place for regulating the governance of the Parish Council. **See Appendix 1.**

Councils continue to use specific powers for things that individuals cannot do, e.g.,

- Raise a precept
- Create byelaws
- Issue fixed penalty notices

As with the previous legislation, Section 137, Power of Well-being, the Power of General Competence is a power to spend not raise money. It cannot be used to raise the precept and if loans are needed, normal procedures apply. The Parish Council can, however, seek other sources of funding to enable a proposal to go ahead. The Council can receive income as a consequence of using the power for a different primary purpose.

For example, the Parish Council could give financial assistance to a struggling local enterprise by purchasing share capital first as an individual could. Similarly, the Parish Council could lend money to support a local activity and earn interest on a loan and it can raise sponsorship for a community project.

Whilst the Government encourage Councils to be innovative, the Parish Council should be aware of the risks involved in using the power in addition to a lack of money or lack of community support.

For example:-

- There is a risk of being challenged
- Trading activities could damage competing local activities
- The Parish Council risk its reputation and public money if a project goes wrong

### **3. Matters for Consideration**

The Parish Council must meet the criteria, as set out in the Parish Councils (General Power of Competence) Prescribed Conditions) Order 2012.

There are two criteria:-

- |   |                     |  |
|---|---------------------|--|
| 1 | Elected Councillors | must equal or exceed two thirds of its total number of Councillors |
| 2 | Qualified Clerk     | At least CiLCA qualified   |

The eligibility process requires that at a meeting of the Parish Council, the Parish Council decides that it meets the criteria.

The resolution to this effect must be written clearly in the minutes of that meeting. The Parish Council must then revisit that decision and make a new resolution at every 'relevant' Annual Meeting of the Parish Council to confirm that eligibility remains in place until the first annual meeting of the Parish Council after the ordinary election, if the condition of the eligibility criteria has changed.

Elected Councillors – at the precise moment the Parish Council resolves that it meets the criteria, the number of Councillors elected at the last ordinary election must equal or exceed two-thirds of its total number of Councillors. Elected Councillors include all Councillors who stood for election whether or not the election was contested.

**Note:** Co-opted or appointed Councillors do not count as they are not elected. If two-thirds is not a whole number, then it must be rounded up to the next whole number.

The Qualified Clerk – the Clerk must hold at least one of the sector specific qualifications and should have completed the relevant training designed by the National Training Strategy for local councils. Clerks who studied for one of the above qualifications prior to April 2012

must undertake relevant training and pass Section 7 of CiLCA 2012, in order to be classed as fully qualified for the purposes of the General Power of Competence.

#### **4. Impact on the Parish Council**

The eligibility criteria must be met before the Power of General Competence can be adopted.

Elected Councillors – the Parish Council meets the criteria for the number of Councillors elected at the last election. The Council has seven members elected at the 2017 ordinary election which exceeds the required two-thirds or five members.

The Parish Council holds the qualifications required. BA Hons in Local Policy (2010) and Section 7 of CiLCA 2012.

The Parish Council meets the eligibility criteria in order to exercise the Power of General Competence.

Once adopted the Parish Council may exercise ‘the power to do anything that individuals may generally do’, as long as no laws are broken. It is a power of first resort, this means that when searching for a power to act, the first question to ask is whether the Parish Council has the General Power of Competence.

#### **5. Recommendations**

It is recommended that the:-

- 5.1 Parish Council confirms that it meets the two required criteria for eligibility, at the time of this meeting, to exercise the Power of General Competence.
- 5.2 Parish Council then resolves to adopt and use the General Power of Competence.

**Linda Roberts BA (Hons), PGCAP, FHEA, FSLCC**

#### **Useful links:**

[www.legislation.gov.uk/ukpga/2011/20/contents/enacted](http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted)

Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012

<http://www.legislation.gov.uk/ukdsi/2012/9780111519868/body>

Localism Act 2011: Explanatory Notes

<http://www.legislation.gov.uk/ukpga/2011/20/notes/division/5/1/1>

Charging guidance <http://www.communities.gov.uk/documents/localgovernment/pdf/>

