

**Meeting: Full Council**

**Date: 12th December 2023**

**Author: Town Clerk**

**Item for Consideration: General Power of Competence**

**1.0    Background Information**

- 1.1**    The Localism Act 2011 introduced a General Power of Competence for Town and Parish Councils, subject to certain conditions being met. Further information about the General Power of Competence is at Appendix A below.
- 1.2**    The Town Council would normally pass this resolution at the Annual Meeting of the Council. This is being done as soon afterwards as it was clear that it had not been completed.
- 1.3**    The law requires that the criteria for holding the General Power of Competence be checked and that a formal resolution be made to that effect at each new administration (after the next election).
- 1.4**    Without the General Power of Competence, the council is restricted in what it can do, and is limited by Section 137 of the Local Government Act on the amount of grants that it can give to the community.

**2.0    Action Required**

- 2.1**    To note the briefing paper on the General Power of Competence as attached at Appendix 1 of this report.
- 2.2**    To note that the conditions are satisfied as follows:
- The number of councillors elected at the last (first) ordinary election is equal to, or exceeds, two thirds of its total number of councillors. 12 out of 15 Councillors have been elected (this includes uncontested elections) and therefore this criterion is satisfied.
  - The Town Clerk holds the CiLCA qualification (completed in 2014)
  - The Town Clerk has passed the 2012 CiLCA module on the General Power of Competence.

**3.0    Recommendations**

- 3.1**    To resolve that the Council meets the criteria for eligibility for the General Power of Competence relating to the electoral mandate and relevant training of the Town Clerk.

## APPENDIX A

### Briefing Paper: The General Power of Competence

#### 1.0 Background Information

- 1.1 Parish and town councils are corporate bodies with powers accumulated through legislation since 1894.
- 1.2 Powers were constrained to specific and appropriate legislation until 2008, when if eligible, parish and town councils could exercise the Power of Well-being 2008 Order made under S.1(2) of Local Government Act 2000 for the benefit of their community.
- 1.3 In the Localism Act 2011, Chapter 1 of Part 1, Sections 1-8, local councils in England were given a General Power of Competence, intended to give local authorities (including parish and town councils) wider powers and a greater freedom to act to deliver more for their communities. The broader General Power of Competence replaced the Power of Well-being.
- 1.4 The General Power of Competence was brought into force by SI 961, The Localism Act 2011 (Consequential Amendments) Order 2012 on 28 March 2012.

#### 2.0 What Does The Power Allow Councils To Do?

- 2.1 The Power is a central part of the Government's move towards the de-centralisation of powers down to the lowest practical level of local government.
- 2.2 The Explanatory Memorandum to The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 No 965 says that 'The Government's intention in providing eligible parish councils with the General Power of Competence is to better enable them to take on their enhanced role and allow them to do the things they have previously been unable to do under their existing Powers.'
- 2.3 This Power gives local councils confidence in the legal capacity to act for their communities. Councils can use this Power to work with others to provide cost effective services and facilities to meet the needs of local communities.
- 2.4 Councils, once they've adopted the power, no longer need to ask whether they have a specific power to act, instead they can rely on this single power to make decisions and deliver services and projects.

#### 3.0 Eligibility Criteria

- 3.1 In order to be eligible to adopt the General Power of Competence the Council must resolve that it meets the criteria for eligibility in relation to the electoral mandate and training of the Chief Officer/Clerk:
- 3.2 At least two thirds of the total seats on the Council must be held by elected Councillors (this means they should have stood for election, whether at an ordinary or by election, even if unopposed, rather than been co-opted or appointed).
- 3.3 The Council's Chief Clerk/Proper Officer must hold the Certificate in Local Council Administration or an equivalent qualification and must have completed training in the exercise of this Power.
- 3.4 The resolution can be passed at any meeting of the Council but a further resolution must be passed at every subsequent 'relevant annual statutory meeting' for the Council to be able to continue to exercise the Power.

## **KINGSWOOD TOWN COUNCIL   Item 4**

3.5     If a Council loses its qualified clerk or has insufficient elected Councillors then it must record it's ineligibility at the next 'relevant' annual meeting of the Council (after the ordinary election). If it has already started an activity it can finish that, but not start anything new.

3.6     There is no requirement for elected members to be trained in the General Power of Competence.

### **4.0   Risks and Restrictions**

4.1     There are limits to the power – councils are given 'the Power to do anything that individuals generally may do as long as they don't break any other laws.' It is intended to be a Power of first, not last, resort.

4.2     There are some limits on using the General Power of Competence where other laws take priority, for example duties on councils to act to prevent crime and disorder; to respect human rights; to consider biodiversity and to protect personal data.

4.3     The General Power of Competence does not mean the Council can delegate decisions to individual Councillors – it does not replace financial and procedural governance.

4.4     The Council has to ask itself if an individual is allowed to do it – if the answer is yes, then a Council is normally permitted to act in the same way. A Council could:

- lend or invest money,
- set up a company or co-operative society to trade and engage in commercial activity,
- run a community shop or post office.
- establish a company to provide services such as local transport.
- provide grants to individuals.

4.5     The Power is not restricted to use within the parish, it can be used anywhere.

4.6     To use this power the Council must have the support of the local community. Whilst Councils are encouraged to be innovative, Councillors must be aware of the risks, in particular the potential for being challenged and damage to the Council's reputation if a project goes wrong.

### **Useful Information**

Localism Act 2011

[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

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