

Willaston Parish Council

Report to Council – Tuesday 26th October 2021

Adoption of the General Power of Competence



1. Background

Prior to the Localism Act 2011, Local Councils had to identify a specific statutory power before carrying out a function. Section 1 of the Localism Act 2011 provides that a local council has the power to do anything that an individual may do as long as it is not prohibited by other legislation – the General Power of Competence (GPC).

This means that Councils, once adopting the power, no longer need to ask whether they have a specific power to act. The General Power of Competence Localism Act 2011 S1 (1) gives Local Authorities including local councils *"the power to do anything that individuals generally may do as long as they do not break any other laws"*.

It is a power of first resort. This means that when searching for a power to act, the first question to ask is whether you can use the GPC. To find the answer, you ask whether an individual is normally permitted to act in the same way. The GPC does not mean the Council can delegate decisions to individual Councillors as this is a procedural matter that remains enshrined in law.

The Government hoped that the GPC would give local councils confidence in their legal capacity to act for their communities and to encourage 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. A Council with the GPC could lend or invest money; it could trade; it could even sell energy to the National Grid.

If another authority has a statutory duty, then it remains their duty to provide that service (e.g. education, social services, policing) but a Council, with the GPC, would be permitted to spend money to help out.

The Council can undertake activities using the GPC anywhere – not just in the parish. Unlike s137, Local Government Act, the GPC does not necessitate that the activity is for the benefit of the council, the area or the community (s1(4c)) although, in practice, residents might object if they can't see the benefit. A Council that has adopted the GPC can no longer use s137 as a power for taking action for the benefit of the area or its community, as mentioned above, the GPC is the power of first resort.

2. Eligibility

There are eligibility criteria that are set out in the Parish Council (General Power of Competence) (Prescribed Conditions) Order 2012 (SI 2012/965). They are that:-

1. At least two thirds of the members of the council have been elected (i.e. not co-opted)¹
2. The Clerk is suitably qualified²
3. The Council is eligible and has resolved to adopt the GPC

¹ Willaston Parish Council currently has 8 of its 12 Members who have been elected

² The Clerk to the Parish Council holds any of the following:-

- i.) Certificate in Local Council Administration (CiLCA)
- ii.) Certificate of Higher Education in Local Policy
- iii.) Certificate of Higher Education in Local Council Administration
- iv.) First Level Foundation Degree in Community Engagement and Governance awarded by the University of Gloucestershire

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. A Council must confirm their eligibility by resolution at a meeting of the full council and must reaffirm that it meets eligibility at the 'relevant annual meeting', i.e. the Annual Meeting that takes places in an election year.

3. Risks and Restrictions

The types of company structures which may be employed in trading or other activities under the GPC are restricted. This prevents the use of community interest companies or similar, which councils may find more appropriate.

Charges made under the GPC may only be made for discretionary services and should be set at a level which recovers costs and does not generate a profit or surplus, which limits the ability of the power to raise additional revenue.

The GPC does not extend the ability of councils to create byelaws or undertake enforcement. It is important to recognise that the GPC is a means to an end. Councils do not – nor should they – seek out opportunities to apply the new power. Rather, they should begin with what they want to achieve and then see if the GPC is a tool which will help them to get there.

Although Councils are encouraged to be innovative, it is important to be aware of the risks involved in using the power, in addition to a lack of money or community support.

For example:-

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

4. Suggested Action

The Clerk has successfully completed CiLCA and at least two thirds of Council Members has been elected which has been verified by Electoral Services at Cheshire East Council. Therefore, the Council is eligible to adopt the GPC and a resolution can be taken.

It is recommended that members consider the information detailed in the report and that a resolution taken which states:-

“Willaston Parish Council resolves from 27th October 2021 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”.

Please note that eligibility is maintained until the Annual Meeting following an ordinary election, even if the Clerk leaves and their replacement is not suitably qualified and/or the number of 'elected members' falls below two-thirds.