



FARNHAM TOWN COUNCIL

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Report to Council

Time and date: 16th May 2019

Adoption of Power of General Competence

1. Local authorities, including town and parish councils, are creatures of statute and so can only do what they are allowed to do by statute. This means that before undertaking any activity, members must be satisfied that the town council has the power under some statute to undertake the activity. Town and Parish councils have many specific powers, for example to provide open spaces and recreational facilities, and there is also the general power in section 137 Local Government Act 1972 to spend up to a certain limit for 'purposes not otherwise authorised'.
2. In the Localism Act 2011, the Government included a 'general power of competence' with the intention that local authorities would no longer have to identify a specific power, and that the risk of challenge would be further reduced.
4. The general power of competence is the 'power to do anything that individuals generally may do'. It is specifically stated that this includes things that are unlike anything else the local authority does, or unlike anything that other public bodies do. The authority can use the general power of competence inside or outside the town/parish area and it need not show that the action benefits the authority or its area or its residents. There is no limit on expenditure under the general power of competence. The general power of competence has replaced the power of well-being, which is no longer available to local authorities in England.
5. The only real limitation is that the general power of competence cannot be used to get round a restriction or limitation in an existing specific power – they will still remain. The general power cannot be used, for example, to pay allowances to members because there is already specific legislation restricting what allowances may be paid. The general power cannot be used where the primary purpose of an activity is to raise money but it could be used to invest (subject to government guidance) in a company or a co-operative society where there may be an investment return. Governance requirements and other legislation (eg employment, health and safety etc) still apply.
6. The Government has not given any guidance on what sort of activities might be undertaken under the general power but some examples could be:
 - Running a community shop or post office;
 - Investing in a local co-operative society;

- Setting up a company to provide a service such as a bus service;
 - Cutting highways verges but this would need permission from the Highways Authority;
 - Providing a grant to an individual, e.g. an Olympic or Paralympic athlete.
7. The General Power is available automatically to principal councils but only to 'eligible' parish councils. The conditions for eligibility are:
- The parish council must pass a resolution stating that it is eligible to use the general power;
 - When the council passes the resolution at least two thirds of the membership of the council must have been elected (i.e. not co-opted);
 - The clerk must hold the Certificate in Local Council Administration (the recognised qualification for clerks) and must also pass the new 2012 CiLCA module on the use of the general power.
8. Eligibility lasts until the annual meeting of the council immediately after the next ordinary elections (i.e. May 2019) but can be renewed at that meeting provided the conditions are still met. Parish councils which are eligible to use the general power are no longer need to keep a separate record of any section 137 expenditure.
9. Farnham Town Council satisfies all the conditions as:
- All 18 councillors were elected at the election in May 2019;
 - The Clerk holds CiLCA;
 - The Clerk has passed the 2012 CiLCA module on the Power of General Competence

Recommendation:

It is recommended that Council confirms that it is eligible to use the general power of competence and re-adopts the general power of competence as a power of first resort.