

ALDERHOLT PARISH COUNCIL GENERAL POWER OF COMPETENCE

The General Power of Competence (The Localism Act 2011 s. 1-8) gives local authorities, including eligible local councils; *the power to do anything that individuals generally may do.*¹ This means they no longer need a specific power to act but must do so within the law

It is a 'power of first resort' which means that it is the first power you consider using. It doesn't matter if there are other specific powers permitting the council to take action, the GPC can still be used. You simply consider whether an individual is normally permitted to act in the same way. For example;

- An individual cannot impose taxes on other people so the council cannot use the GPC to raise taxes

If the GPC cannot be used there may still be other specific powers that can be used. For example;

- Raising a precept or creating a byelaw

There are still some things that the GPC does not allow a council to do. For example;

- A council cannot delegate decisions to individual councillors- this is a procedural matter which is enshrined in law

The Council can undertake activities using the GPC anywhere, not just in the parish (s.1 (4a))

Unlike s.137, It is not necessary to consider whether the activity is for the benefit of the council, the area or the community (s.1 (4C)), although in practice, parishioners may object if they do not see a benefit!

The Council, as always, is expected to act in accordance with the general principle of "reasonableness" established by the Wednesbury case in 1948 i.e. a council can exercise reasonable discretion when interpreting legislation provided that it justifies its decision in term of relevant, rather than irrelevant matters.

Risks to consider;

- Inadequate community support
- Insufficient funding
- The risk of being challenged
- Trading activities could damage competing local activities
- The council's reputation and public money if a project goes wrong

Restrictions to consider;

1. Statutory duties remain in place and must still be abided by;
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¹ Localism Act 2011 s.1(1)

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- Duty to act with regard to Crime and Disorder (crime and Disorder Act 2006 s.17)
 - Duty to consider biodiversity (Natural Environment and Communities Act 2006s 40)
 - Duty to consider general law e.g. Health and Safety, Data protection
 - Procedural and Financial Duties
2. To consider existing statutory duties of other authorities e.g. seeking permission from a Highways Authority before carrying out work on roadside verges
 3. If a council wishes to trade it must set up a company or co operative society and abide by company law
 4. If a council wants to invest in a local business to support the local economy, it should follow Government advice on investment. If a council loses its eligibility, it can continue with the purpose of completing an existing activity but cannot start anything new under the power until it once again fulfils criteria.

Source; Information taken from DAPTC GPC Training fact sheet May 2012