

General Power of Competence May 2020



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Dymchurch Parish Council
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General Power of Competence

Information regarding the advantages of using this power

Local authorities in the UK are permitted only to do things which they are legally entitled to do. If it did something that it did not have the power to do this would be assessed to be ultra vires-illegal and therefore void.

This has always been regarded as a limitation on local authorities to be able to act in the best interests of their communities.

This is where the “general power of competence” comes in. The idea of this power dates back to 1967 where the way local authorities were restricted in their powers was identified and discussed at length.

It was not until the Localism Act 2011 was given Royal ascent (having been through other forms prior to this) that the power as we know it today became more widely used.

This power permits Councils to do anything that a person can legally do, for example start a business, buy a car, give money to a person and in summary:

- carry out any lawful activity.
- undertake any lawful works.
- operate any lawful business.
- and enter into any lawful transaction.

It of course still requires the Council to demonstrate due diligence and the appropriate use of public funds when exercising this power.

It does not however give a Council the power to ignore anything that is required of it under common law, specific legislation or statutory guidance.

In order to use this power a Council must have a qualified Clerk and 2/3rds of its members must have been elected, so not co-opted.

Dymchurch Parish Council meets these criteria with the Clerk being qualified having obtained the Certificate in Local Council Administration.

SUMMARY

Dymchurch Parish Council currently relies on specific powers to carry out its obligations and to work for the community.

It also relies as a last resort of Section 137 (a power to give a certain amount of money in specific circumstances).

This is recognized in certain circumstances to restrict what the Council can and cannot do within their community

The General Power of Competence is a power of first resort

It permits a Council to do anything a person could do if it is a lawful act

It allows Councils to be imaginative and proactive with their available funds

THE PROPOSAL

It is proposed that Dymchurch Parish Council having more than 2/3 of its Councilors elected at the last elections and a Clerk qualified in the Certificate of Local Council Administration declares that from the 4th May 2020 it will use the General Power Of Competence (Localism Act 2011)

To read the full background to the general power of competence please use this link which was used to write the above report

<https://commonslibrary.parliament.uk/research-briefings/sn05687/>