

9th May 2023

To: All Members of Newbury Town Council

Dear Councillor

You are required to attend the **Annual Meeting** of **Newbury Town Council** to be held in the **Corn Exchange**, Market Place, Newbury at **10.00 am** on **Sunday 14 May 2023**.

Please assemble at the Town Hall, from **9:00 am**, ready for the procession to Corn Exchange at 10:00 am.

Yours sincerely,

Hugh Peacocke
Chief Executive Officer

PRE-MEETING ITEMS

- A. Retiring Mayor's Report**
To receive the retiring Mayor's report on his year of office.
- B. Vote of thanks**
To receive a vote of thanks for the retiring Mayor.

ANNUAL MEETING AGENDA

- 1. Election of Mayor**
To Elect the Town Mayor for the Municipal year 2023-24.
- 2. Declaration of acceptance of office and Mayor's announcements**
Elected Mayor
To receive the Mayor's declaration of acceptance of office and announcements.
- 3. Election of Deputy Mayor**
To Elect the Deputy Mayor for the Municipal year 2023-24.

Town Hall, Market Place, Newbury, RG14 5AA

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4. **Declaration of acceptance of office and Deputy Mayor's announcements**
To receive the Deputy Mayor's declaration of acceptance of office and announcements.
5. **Apologies for absence**
To receive any apologies for absence for the meeting.
6. **The General Power of Competence (Appendix 1)**
To resolve that the Council meets the conditions required to exercise the General Power of Competence.
7. **Council Committees and sub-committees for Municipal Year 2023/2024**
 - 7.1 **To Approve** the Committee and Sub-Committee structure for the Municipal Year 2023/2024
 - 7.2 **To Appoint** the members to serve on each of the Council's Committees and Subcommittees for the Municipal Year 2023/2024

Newbury Town Council

Public Report

Report to: Annual meeting, 14 May 2023.

Agenda Item No 7: The General Power of Competence

To resolve that the Council meets the conditions required to exercise the General Power of Competence.

1. Background:

1.1 Parish and town councils are corporate bodies that have accumulated powers through legislation since 1894. Their powers are constrained to specific and appropriate legislation. This means that before undertaking anything, members must be satisfied that a town council has the power (under a specified statute) to undertake that activity.

1.2 Town councils have many specific powers (e.g. the provision of open spaces and recreational facilities) in addition to section 137 of the Local Government Act 1972, permitting the expenditure up to certain limits for “purposes not otherwise authorised”. Typically, the expenditure on grants and sponsorship is covered by section 137 of the Local Government Act, 1972.

1.3 Despite the wide range of powers, town councils are always at risk of being challenged, especially if they undertake an unusual activity.

1.4 In consequence, the Government included a “general power of competence” in the Localism Act 2011 (Part 1, Chapter 1, ss 1-8). For Town and parish Councils it was brought into force by SI 965 The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 in April 2012.

2. LEGISLATIVE BACKGROUND:

2.1 The intention of the legislation is that eligible local authorities will no longer have to identify specific powers to undertake an activity. As a result, the risk of legal challenge will be reduced. It is stated in the above Statutory Instrument that
“The Government’s intention in providing eligible parish councils with the general power of competency is to better enable them to take on their enhanced role and allow them to do things they have previously been unable to do under existing powers”.

2.2 Under the new legislation, eligible town councils have “the power to do anything that individuals generally may do” as long as they do not break other laws. It is intended to be the power of first, not last, resort. The eligible council has to ask itself if an individual is allowed to do it. If the answer is “yes”, then a town council is normally permitted to act in the same way.

3. TYPES OF ACTIVITIES:

3.1 Examples of activities covered by the legislation include:

- Running a community shop or post office
- Lend or invest money
- Establish a company or co-operative society to trade and engage in commercial activity
- Establishing a company to provide services such as local transport
- Providing grants to individuals.

3.2 The power is not restricted to use within the town - an eligible town council can use it anywhere.

4. RESTRICTIONS AND RISKS:

4.1 The only real limitation is that the general power of competence cannot be used to circumvent an existing restriction in an existing specific power. The general power of competence cannot be used to raise the precept.

4.2 Existing duties remain in place, such as having regard to the likely effect on crime/disorder and biodiversity. There are also many existing procedural and financial duties that remain in place for the regulation of governance (e.g. no delegation to a single councillor). Furthermore, councils must comply with relevant existing legislation (e.g. employment law, health and safety, equality legislation and duties relating to data protection and freedom of information).

4.3 If another council has a statutory duty to provide a service (e.g. education, social service, highways, footpaths, rights of way), it remains their duty to provide it. Nonetheless, eligible town councils may assist. The eligible town council would need to ask itself whether an individual, private company or community trust could help. If the answer is “yes”, the town council can assist.

4.4 Whilst councils are encouraged to be innovative, they should be aware of the risks of:

- Being challenged
- Their trading activities damaging other local enterprises
- Damage to the council’s reputation and public money if a project or investment goes wrong.

5. What is the General Power of Competence being used for?

5.1 Extending services and support into new areas:

“Stating that councils can do anything an individual can do (unless specifically prohibited) in legislation has given greater confidence to do new things and do things differently – the default setting is now ‘yes we can unless...’ rather than ‘we can’t unless specifically permitted’. The ultra vires issue becomes less of a concern. For instance, the GPC has already given a number of councils the specific legal basis and confidence to extend their services and support beyond the arena traditionally seen as the responsibility of the authorities like them.

5.2 Parish and town councils, in particular, have found being eligible to adopt GPC (as outlined in the previous section) a major boost to their confidence to act and also that of their members in general. They have used the GPC to provide the basis for taking on responsibility for services previously provided by one of the principal authorities for the area, for example because these are being withdrawn as a result of financial pressures and a review of priorities. Clerks to town and parish councils have found it positive to be able to advise members that it is possible for their councils to do more things, where this is aligned to council and community priorities and at reasonable cost. Even when not used to support new services or innovation, it has saved time and resources in searching for more specific powers.”

(The Local Government Association)

6. ELIGIBILITY:

6.1 The three conditions for eligibility are set out in the Statutory Instrument (paragraph 1.4 above) as follows:

- 1. Resolution:** the council must resolve at a meeting that it meets the criteria for eligibility relating to the electoral mandate and relevant training of the clerk.
- 2. Electoral mandate:** at the time the resolution is passed, at least two thirds of the council must hold office as a result of being declared elected (i.e. not co-opted).
- 3. Qualified clerk:** At the time that the resolution is passed, the clerk must hold a recognised professional qualification (e.g. Certificate in Local Council Administration, Certificate of Higher Education in Local Policy) **AND** pass the 2012 CiLCA module relating to the general power of competence.

7.2 Having decided at a full meeting of the council that it meets the criteria for eligibility at that particular time, a resolution to this effect must be clearly written in the minutes. The Council is then required to revisit that decision and make a new resolution at every ‘relevant’ annual meeting of the council to confirm that it still meets the criteria (if it does). A ‘relevant’ annual meeting is the annual meeting of the Council after the next ordinary election has taken place (i.e. the next ‘relevant’ date for Newbury Town Council would be May 2023).

7.3 In consequence, eligibility remains in place until the ‘relevant’ annual meeting even if the conditions of the eligibility criteria have changed. If the council loses its qualified clerk or has insufficient elected councillors it must also record its ineligibility at the next ‘relevant’ meeting.

7.4 There is no requirement for members to be trained in the general power of competence.

7.5 Newbury Town Council satisfies all the conditions as:

- 1.** All of its 23 councillors have been elected
- 2.** The Clerk of the Council (The Chief Executive Officer for Newbury Town Council) holds the Certificate in Local Council Administration (CiLCA)
- 3.** The Clerk of the Council has passed the CiLCA module on the general power of competence.

8. COUNCIL STRATEGY

As stated in the Council's strategy, our Mission Statement declares that Newbury Town Council is committed to continuing to make Newbury a better place to live, work and visit. The general Power of Competence enables us to be more flexible and responsive in addressing the needs of the community.

9. RECOMMENDATION:

It is recommended that the Council considers this report and passes the following resolution:

Newbury Town Council resolves from 14 May 2023, until the next relevant Annual Meeting of the Council, that having met the conditions of eligibility as defined in the Localism Act 2011 and in The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012, to adopt the General Power of Competence.

Signed: Hugh Peacocke
Chief Executive Officer

9 May 2023