

Functions of Parish & Town Councils

**SALC-SCAPTC Legal Advice Note 17
September 2010**

PARISH AND TOWN COUNCIL FUNCTIONS

BASIC CONCEPTS

1 What is a parish/town/village/community/neighbourhood council?

- It is a local authority
- It comprises a chairman and councillors
- Councillors are elected every four years
- The chairman is elected annually from among the councillors
- It is a statutory body corporate and acts corporately
- Councillors (Members) are not (generally) personally liable for the acts or omissions of the Council

2 What can a parish council do?

- It can only act within the scope of the statutory functions given by Parliament
- It can own land and other assets, employ staff, enter into contracts for services, supplies and works
- It must appoint an officer to manage its financial affairs
- It can raise a tax through a precept and must set a budget for the purpose of revenue (and capital) income and expenditure
- It can borrow monies for capital expenditure
- It can sue and be sued

3 Methods of control

- Statutory envelope
- Democratic
- Audit
- Judicial – judicial review (as to powers), criminal and civil jurisdictions
- Appellate jurisdiction
- Standards regime affecting individual Members

4 Structure

- Decision-making through full Council
- Decisions can be delegated to a committee (or by a committee to a sub-committee) or to an officer
- Individual Members cannot take decisions
- Only full Council can set the budget and precept and the borrowing strategy
- It is for Members acting upon advice to set the strategy and it is for officers to implement the lawful decisions of Members

5 Proper and valid decision-making

- A local authority is a creature of statute and can only do what statute expressly or impliedly allows
- Functions are duties (obligatory requirements) ('must' or 'shall') and powers (permissive) ('may')
- The valid exercise of a function must:
 - fall within a statutory envelope
 - be properly made by someone authorised to make the decision
- A valid decision must:
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 - be reached in a procedurally correct and reasonable manner
 - itself be reasonable
- 'Reasonable' means a decision:
 - must take account of proper considerations
 - must leave out of account irrelevant considerations
 - must be made for a proper purpose
 - must be proportionate as to the purpose to be achieved and the expenditure involved
 - must have regard to the Council's fiduciary duty to its taxpayers
- Decisions should be properly documented and justified by reasons
- The scope of an authority's powers will be materially affected by its ability to exercise s 2 of the Local Government Act 2000 (eligible councils only).

2 Promotion of well-being

(1) Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects–

- (a) the promotion or improvement of the economic well-being of their area;
- (b) the promotion or improvement of the social well-being of their area, and
- I the promotion or improvement of the environmental well-being of their area.

(2) The power under subsection (1) may be exercised in relation to or for the benefit of–

- (a) the whole or any part of a local authority's area, or
- (b) all or any persons resident or present in a local authority's area.

(3) In determining whether or how to exercise the power under subsection (1), a local authority [in England] must have regard to their strategy under section 4.

(3A) But, in the case of an eligible parish council, that is subject to section 4A [parish councils are under no obligation to produce a community strategy but must have regard to their principal authorities' sustainable community strategies]

(4) The power under subsection (1) includes power for a local authority to–

- (a) incur expenditure,
- (b) give financial assistance to any person,
- I enter into arrangements or agreements with any person,
- (d) co-operate with, or facilitate or co-ordinate the activities of, any person,
- I exercise on behalf of any person any functions of that person, and
- (f) provide staff, goods, services or accommodation to any person.

(5) The power under subsection (1) includes power for a local authority to do anything in relation to, or for the benefit of, any person or area situated outside their area if they consider that it is likely to achieve any one or more of the objects in that subsection.

(6) Nothing in subsection (4) or (5) affects the generality of the power under subsection (1).

3 Limits on power to promote well-being

(1) The power under section 2(1) does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made).

(2) The power under section 2(1) does not enable a local authority to raise money (whether by precepts, borrowing or otherwise).

• The exercise of powers will be subject to the general law e.g. as to the obtaining of planning permission or the obtaining of consents of other bodies e.g. the Secretary of State, the Charity Commission.

A SUMMARY OF THE FUNCTIONS OF LOCAL COUNCILS

1. The powers which have been vested in Parish and Town Councils by Acts of Parliament are summarised as a guide to Councillors and others. Each description is brief and is intended to be a general indication.

2. The powers are listed alphabetically. Where a power is marked with an asterisk the council may, in addition to exercising the power itself, help another body to act by giving financial assistance.

3. **Allotments** – Provision and maintenance of allotments for cultivation.

4. **Arts** – Developing and improving knowledge of the arts and the crafts which serve the arts.

5. **Baths** – Provision of baths and wash-houses (which in modern terms may mean a launderette).

6. **Borrowing** – Parish and Town Councils can borrow money for up to a maximum of 50 years with consent of the Secretary of State. The Council must have loan sanction consent before

Borrowing

7. ***Cemeteries** – Provision and maintenance of burial grounds, cemeteries, crematoria, mortuaries and post-mortem rooms.
8. **Churchyards** – Power to contribute to the costs of a churchyard in use and a duty to maintain any closed churchyard where the duty has been transferred by the Church of England.
9. **Clocks** Provision and maintenance of public clocks, on churches or elsewhere.
10. **Commons** – Power to protect any finally registered common which has no registered owner.
11. **Crime Prevention** – installation of equipment and establishment of schemes for the detection or prevention of crime; making grants to the police authority for these purposes. This now includes the ability to contribute to the funding of police officers or police community support officers.
12. **Entertainments** – Provision of any form of public entertainment and any premises for giving entertainments. (This includes maintaining bands or orchestras and providing for dancing.)
13. **Halls** – Provision of buildings for public meetings and functions, for indoor sports or physical recreation, or for the use of clubs or societies having recreational, social or athletic objects.
14. **Legal Proceedings** – Power to prosecute and defend any legal proceedings in the interests of the inhabitants. Power to take part in any public local inquiry.
15. **Lighting** – Provision and maintenance of any footway lighting which lights roads or pavements provided the columns are not above specified heights.
16. **Litter** – Provision of litter-bins in streets and support for anti-litter campaigns.
17. **Open Spaces** – Provision and maintenance of public open spaces, pleasure grounds and public walks.
18. **Parking Places** – Provision and management of car and cycle parks.
19. **Parks** – Provision and maintenance of public parks and appropriate facilities.
20. **Planning** – Local councils have a right to be notified of any planning application affecting their area and to make comments which the planning authority must take into account.
21. **Playing Fields** – Provision and maintenance of land for any kind of outdoor recreation, including boating pools.
22. **Ponds** – Power to deal with ponds, pools or other places containing filth or matter prejudicial to health.
23. **Public Lavatories** – Provision and maintenance of public lavatories.
24. **Rights of Way** – Maintenance of public footpaths and bridleways.
25. **Roadside Verges** – Power to plant and maintain roadside verges.
26. **Seats** – Provision and maintenance of public seats on the highway.
27. **Shelters** – Provision and maintenance of shelters for general public use and also particularly for bus passengers.
28. **Signs** – Power to erect signs which warn of dangers or announce a place name, or indicate a bus stop.

29. **Swimming** – Provision of indoor or outdoor swimming pools or bathing places.

30. **Tourism** – Provision of facilities for conferences and encouragement of recreational and business tourism.

31. **Traffic Calming** – contribution towards the cost of traffic calming works provided by highway authorities.

32. **Transport** – establishment of car-sharing and taxi fare concession schemes; making grants for community bus services and bus services for the elderly or disabled; investigation of public transport, road and traffic provision and needs; provision of information about public transport services.

33. **Village Green** – Powers to maintain the village or town green.

34. **General Expenditure Power** – Section 137 Local Government Act 1972. In any situation not covered by one of the specific powers described above, a council may spend money on any purpose which in its opinion is of direct benefit to its area or to the inhabitants. The total expenditure by the council on all the cases under its general power must not in any financial year exceed £6.15 per local government elector in the parish or town. S 137(1) is disapplied to eligible councils entitled to exercise s 2 of the Local Government Act 2000.

35. This list is intended only as a summary of the principal functions of local councils. It is not intended to be a definitive list of such functions.

Function	Powers & Duties	Statutory Provisions
Allotments	Powers to provide allotments. Duty to provide allotment gardens if demand unsatisfied	Small Holdings & Allotment Act 1908, ss.23, 25 and 42
Baths and Washhouses	Power to provide public baths and washhouses	Public Health Act 1936, ss.221,222,223 and 227
Burial grounds, cemeteries and crematoria	Power to acquire and maintain Power to provide Power to agree to maintain monuments and memorials Power to contribute towards expenses of cemeteries	Open Spaces Act 1906, ss.9 and 10; Local Government Act 1972, s.214; Parish Councils and Burial Authorities (Miscellaneous Provisions) Act Local Government Act 1972, s.125(6) 1970, s.1
Bus Shelters	Power to provide and maintain shelters	Local Government (Miscellaneous Provisions) Act 1953, s.4
Bye Laws	Power to make bye-laws in regard to pleasure grounds Cycle Parks Baths and Washhouses Open spaces and burial grounds Mortuaries and post-mortem rooms	Public Health Act 1875, s.164 Road Traffic Regulation Act 1984, s.57(7) Public Health Act 1936, s.223 Open Spaces Act 1906, s.15 Public Health Act 1936, s.198
Charities	Co-operation with charities Participation in charities	Charities Act 1993, s 78 Local Government Act 1972 s 139(1)(b)

Clocks	Power to provide public clocks	Parish Councils Act 1957, s.2
Closed Churchyards	Powers as to maintenance	Local Government Act 1972, s.215
Commons and common pastures	Powers in relation to inclosure, as to regulation and management, and as to providing common pasture	Inclosure Act 1845; Local Government Act 1894, s 8(4). Smallholdings and Allotments Act 1908,s.34
Conference Facilities	Power to provide and encourage the use of facilities	Local Government Act 1972, s.144
Community Centres	Power to provide and equip buildings for use of clubs having athletic, social or education objectives	Local Government (Miscellaneous Provisions) Act 1976, s.19
Crime Prevention	Powers to spend money on various crime prevention measures	Powers to spend money on various crime prevention measures
Drainage	Power to deal with ponds and ditches	Public Health Act 1936, s.260
Entertainment and the arts	Provision of entertainment and support of the arts	Local Government Act 1972, s.145
Gifts	Power to accept	Local Government Act 1972, s.139
Grants	Power to make grants	Local Government Act 2000 s 2, Local Government Act 1972 , ss 137(1), 137(3) (charities), 145, Local Government (Miscellaneous Provisions) Act 1976 s 19 (recreational facilities) Transport Act 1985 s 106A (bus services)
Highways	<p>Power to repair and maintain public footpaths and bridle-ways</p> <p>Power to light road and public places</p> <p>Power to provide parking places for vehicles, bicycles and motor-cycles</p> <p>Power to enter into agreement as to dedication and widening</p> <p>Power to provide roadside seats and shelters, and omnibus shelters</p> <p>Consent of parish council required for ending maintenance of highway at public expense, or for stopping up or diversion of highway</p> <p>Power to complain to district council as to protection of rights of way and roadside wastes</p> <p>Power to provide traffic signs</p>	<p>Highways Act 1980, ss.43, 50</p> <p>Parish Councils Act 1957, s.3; Highways Act 1980, s.301</p> <p>Road Traffic Regulation Act 1984, ss.57, 63</p> <p>Highways Act 1980, ss.30, 72</p> <p>Parish Councils Act 1957, s.1</p> <p>Highways Act 1980, ss.47, 116</p> <p>Highways Act 1980, s.130</p> <p>Road Traffic Regulation</p>

	and other notices	Act 1984, s.72
	Power to plant trees etc. and to maintain roadside verges	Highway Act 1980, s.96
Investments	Power to participate in schemes of collective investments	Trustee Investments Act 1961, s.11
Land	Power to acquire by agreement, to appropriate to dispose of	Local Government Act 1972, ss.124, 126, 127
	Power to accept gifts of land	Local Government Act 1972, s.139
Litter	Provision of receptacles	Litter Act 1983, ss.5,6
Lotteries	Powers to participate in lotteries	Gambling Act 2005 ss 98, 99
Markets	Power to provide market	Food Act 1984 Pt 3
Mortuaries and post mortem rooms	Powers to provide mortuaries and post mortem rooms	Public Health Act 1936, s.198
Nuisances	Power to deal with offensive ditches	Public Health act 1936, s.260
Open Spaces	Power to acquire land and maintain	Public Health Act 1875, s.164 Open Spaces Act 1906, ss.9, 10
Parish Property and documents	Powers to deal direct as to their custody	Local Government Act 1972, s.226
Public Buildings and village hall	Power to provide buildings for offices and for public meetings and assemblies	Local Government Act 1972, s.133
Public Conveniences	Power to provide	Public Health Act 1936, s.87
Recreation	Power to acquire land or to provide recreation grounds, public walks, pleasure grounds and open spaces and to manage and control them	Public Health Act 1875, s.164 Local Government Act 1972, sch 14 para.27 Public Health Acts Amendment Act 1890
	Power to provide recreational facilities	Local Government (Miscellaneous Provisions) Act 1976, s.19
	Provision of boating pools	Public Health Act 1961, s.54
Town and Country Planning	Right to be notified of planning applications	Town and Country Planning Act 1990, sch. 1, para.8
Tourism	Power to contribute to organisations encouraging	Local Government Act 1972, s.144
Traffic Calming	Powers to contribute financially to traffic calming schemes	Highways Act 1980 s 274A
Transport	Powers to spend money on community transport schemes	Local Government and Rating Act 1997 ss.26-29
War Memorials	Power to maintain, repairs, protect and adapt war memorials	War memorials (Local Authorities' Powers) Act 1923, s.1, as extended by Local Government Act 1948, s.133
Water Supply	Power to utilise well, spring or stream and to provide facilities	Public Health Act 1936, s.125

	for obtaining water therefrom	
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IMPORTANT NOTE

These guidance notes fairly represent the state of the law at the date mentioned but Members should be aware that the precise position may be different depending upon the particular circumstances of the case.

HEDLEYS