

CLERKS ADVICE – LETTER FROM PCC 28.09.2020

The letter raises two questions: support for an appeal for volunteers to help tidy/weed etc. and a request for man-hours or grant funding.

Appeal for volunteers.

I have advised the PCC that the Parish Council would be very happy to publish an article in the Broadsheet to ask for volunteers to help with the churchyard tidying; the deadline for the Christmas edition is the end of October and will be the end of January for the Spring edition.

I have asked for a copy so it can be shared on the website and social media too.

Appeal for man-hours/funding

For the answer, we need to look at one of the oldest Acts in the parish and town council legislative framework. The [Local Government Act 1894](#) sets out in legislation the relationship between the Church and Parish Councils. [Part 1, section 6](#) (a) and (c) relate to exceptions in the transfer of all powers, duties and liabilities from the vestry to the Parish Council; [Part 1 section 8 \(1\)\(i\) and \(k\)](#) clarifies that the parish council may execute works in relation to parish property and incur associated expense save for where they relate to affairs of the church.

More recent legislation does make provision for some elements to be shared between parochial and civic councils, such as s.214(6) of the Local Government Act 1972 in relation to burials, s.215 for maintenance of closed churchyards, s.137, s.138B for the support/facilitation of a religious event. The Localism Act 2011 introduced the General Power of Competence (GPC), which this Council has resolved to use as a Power of first resort given it meets the criteria set out in the Parish Council (General Power of Competence)(Prescribed Conditions) Order 2012/965, however the above specific permissions and GPC cannot be used to 'override' activity that is prohibited by other Acts of Parliament.

In short, until such time as there is further legislation or indeed case law to resolve the question of whether the general restrictions in the 1894 Act are overridden by the specific provisions in later Acts, it is generally accepted - and is the view of the National Association of Local Councils - that a Parish Council carrying out or funding works relating to the Church would likely be acting ultra vires (save for where express consent is permitted in later Acts). Therefore, my advice to Council is that it would not be prudent for it to take a course of action that it cannot be certain is legally valid. This would equally apply to the Parish Council instructing its staff to undertake works in the churchyard, and also to the Parish Council awarding a grant towards the cost of employing / engaging someone to carry out this work.

The clock is mentioned and is a different matter. The Parish Councils Act of 1957 section 2 gives parish councils the power to provide public clocks and although the clock is housed in the Church Bell Tower, one presumes that at some point it was designated as a public clock rather than a church clock.

This concludes my advice to Council on this matter.

Angie Hurren, FdA, Fellow SLCC

Broadclyst Parish Clerk

28.09.2020