

## Clerk briefing note to Councillors – 30 December 2023

### Broadband wires Little Hampden

#### Issue

1. The minutes of the meeting held on 28 November 2023 at 23/0070 (a) Correspondence show:

*“Councillor Butler advised that she had received an item of correspondence from a Little Hampden MoP in respect of recent broadband issues in Little Hampden. A request had been made for the Parish Council to consider using CIL money to cut branches from around the overhead broadband cables. The MoP had provided Councillor Butler with a quote he had obtained. It was noted that most of the trees are further than 1.5m from the road so were not the responsibility of Buckinghamshire County Council, and that they were on land owned by Little Hampden Estate. The Clerk was INSTRUCTED to add the item to the next agenda. In the meantime, the Clerk was INSTRUCTED to ascertain a) whose responsibility are the trees, 2) which power a Council could potentially use, and 3) if CIL rules allowed such expenditure.”*

2. In respect of points 2 and 3, attached to this briefing note are a SLCC ‘powers and functions’ document and print of the.gov.uk Community Infrastructure Levy [‘CIL’] page.

#### Powers and CIL

3. There is no specific power available for the Council to use for these works.
4. CIL can only be used for infrastructure projects. As this issue is a maintenance issue, and the money would not be used to undertake a repair to “support the development” of the infrastructure, CIL cannot be used for this purpose.

#### Recommendation

5. The only route available for the Council, to assist the residents of Little Hampden, is to ascertain the ownership of the land and to encourage the landowner to maintain the hedges.

# Part 1: Powers and Functions of Parish Councils

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There are some 8,500 local councils at parish and town level in England. As a tier of local government they are elected bodies, with discretionary powers and rights laid down by Parliament to represent their communities and provide services for them. Policy has centred on the fact that they act as a focus for local opinion, and provide a way to get things done in a way that is best suited to their local community.

Parish councils in their current form were created by the Local Government Act 1894. Their governance, shape and form was consolidated in the Local Government Act 1972 (the Act). Under the Act, by passing a resolution, a parish council may be renamed a "town council". This is particularly important since old urban district councils were incorporated into parish form. As a result of changes to the Act, brought about by the Local Government and Public Involvement in Health Act 2007, a parish council may be known alternatively as a "community", "village" or "neighbourhood" council. This latest development is a reflection of the change in the nature of parishes, especially the needs of urban and suburban areas where there has been little tradition or expectation of a parish tier of local government.

The National Association of Local Councils (NALC) and the Society of Local Council Clerks (SLCC) quite sensibly use the generic expression of "local councils" to describe all councils which fall into this class of authority. For ease of use, and to ensure we don't clash with any publication of NALC or SLCC, we have used the legal term of "parish council" throughout this publication to mean all councils at the parish level of local government.

All councils are constituted in the same way; councillors are elected by the local government electorate and each council has a chairman, who must be one of the elected councillors. Councils vary in size and capacity; many are small, representing a few hundred people, others represent communities of over 30,000 people with budgets of over £1m and expenditure and staffing levels per head of population similar to a small district council.

A council is a corporate body with perpetual succession and a name. Local councillors are often referred to as "Members" – for example in codes of conduct. The number of councillors is fixed by the district (or unitary) council. A parish council's lawful acts, assets and liabilities are its own and not those of its councillors or any other council.

A council must act within the law. It can only spend, raise or use money if it has a statutory power to do so, otherwise it acts ultra vires (beyond its powers). Parish councils have a wide range of powers under different acts of Parliament. Most of these powers are discretionary, i.e. a council may do something, rather than it must do something. However, under the Localism Act 2012 the general power of competence was extended to eligible local councils. This means they no longer need to ask if they have a specific power to do something but instead have "the power to do anything that individuals generally may do" as long as they don't break other laws. To be eligible at least two-thirds of the members of the Council must have been elected rather than co-opted and the clerk must hold at least one of the sector-specific qualifications and should have completed the relevant training designed as part of the National Training Strategy for local councils.

A parish council has the unfettered right to raise money by precept (a mandatory demand) on the higher authority. The precept required by a parish council is then collected by the Higher Authority as part of the council tax levied on taxpayers in that parish.

Parish councils act as sounding boards for local opinion, though the range of services and amenities provided varies enormously. They often work with local voluntary organisations and other tiers of local government and have an important role in providing and improving very local services and amenities. Councils are represented nationally by NALC, referred to above, which works with independent county associations to provide routine support for councils and their clerks. County training partnerships provide training to the members and employees of parish councils.

There are certain obligations which by law a parish council must fulfil. For example:

It must hold an annual meeting;

It must hold at least three other meetings a year;

It must appoint such officers as it believes necessary for the proper discharge of its functions. This must include an officer responsible for the proper administration of financial affairs;

It must make Standing Orders for the supply of goods and services to the council.

The arrangements for meetings and proceedings of local councils are set out in [Part II of Schedule 12 to the Local Government Act 1972](#), as supplemented by any standing orders adopted by a council.

Parish councils should not see themselves as operating in isolation. They will achieve far more by being prepared to work constructively with other public bodies and organisations around them.

Parish councils will wish to:

Be consulted on planning applications and will need a close relationship and understanding with the planning office of their higher authority. Parish councils are encouraged to prepare parish/neighbourhood plans in consultation with the planning office with a view to the plan being taken into account by the higher authority in considering planning applications and preparing the Local Plan.

Have points of contact with principal council services, such as highways, cleansing, parks, elections etc. and to contribute to the way such services are provided.

Work closely with the monitoring officer of the principal council on standards matters and the members' code of conduct.

Be represented, collectively with other parish councils, on the Local Strategic Partnership.

Liaise with other stakeholders operating services within the parish council boundaries.

Contribute to proposals which may be made to the Secretary of State under the Sustainable Communities Act 2007.

As the lowest tier of democratically elected representatives in the country, parish councils have the mandate to speak on behalf of the people they represent. It is important that parish councils learn how to do this with authority and integrity in order to have the optimum effect.

## Parish council powers

Function	Powers & Duties	Statutory Provisions
Allotments	Duty to provide allotments	<a href="#">Small Holding &amp; Allotments Act 1908</a> , s.23
	Power to improve and adapt land for allotments, and to let grazing rights	<a href="#">Small Holding &amp; Allotments Act 1908</a> , s.26 <a href="#">Small Holding &amp; Allotments Act 1908</a> , s.42
Baths and washhouses	Power to provide public baths and washhouses	<a href="#">Public Health Act 1936</a> , ss.221, 222, 223, 227
Burial grounds, cemeteries and crematoria	Power to acquire and maintain	<a href="#">Open Spaces Act 1906</a> , ss. 9, 10
	Power to provide	<a href="#">Local Government Act 1972</a> , s.214

	Power to agree to maintain monuments and memorials	Parish Councils and Burial Authorities (Miscellaneous Provisi
	Power to contribute towards expenses of cemeteries	Local Government Act 1972, s.214(6)
<b>Bus shelters</b>	Power to provide and maintain shelters	Local Government (Miscellaneous Provisions) Act 1953, s.4
<b>Bye-laws</b>	Power to make bye-laws in regard to pleasure grounds	Public Health Act 1875, s.164
	Cycle parks	Road Traffic Regulation Act 1984, s.57(7)
	Baths and washhouses	Public Health Act 1936, s.223
	Open spaces and burial grounds	Open Spaces Act 1906, s.15
	Mortuaries and post-mortem rooms	Public Health Act 1936, s.198
<b>Clocks</b>	Power to provide public clocks	Parish Councils Act 1957, s.2
<b>Closed churchyards</b>	Powers as to maintenance	Local Government Act 1972, s.215
<b>Common pastures</b>	Powers in relation to providing common pasture	Smallholdings and Allotments Act 1908, s.34
<b>Conference facilities</b>	Power to provide and encourage the use of facilities	Local Government Act 1972, s.144
<b>Community centres</b>	Power to provide and equip buildings for use of clubs having athletic, social or recreational objectives	Local Government (Miscellaneous Provisions) Act 1976 s.19
<b>Crime prevention</b>	Powers to install and maintain equipment and establish and maintain a scheme for detection or prevention of crime	Local Government and Rating Act 1997, s.31
	Power to contribute to police services e.g. PCSOs	Police Act 1996, s.92
	Duty on Parish Councils to consider crime reduction in every policy and action	Crime and Disorder Act 1998, s.17
<b>Drainage</b>	Power to deal with ponds and ditches	Public Health Act 1936, s.260
<b>Entertainment and the arts</b>	Provision of entertainment and support of the arts	Local Government Act 1972, s.145
<b>Flyposting and Graffiti</b>	Power to take enforcement action against those that fly-post or graffiti	Cleaner Neighbourhoods and Environment Act 2005
<b>General Power of Competence</b>	Power of first resort for qualifying councils	Localism Act 2011 s.1
<b>Gifts</b>	Power to accept	Local Government Act 1972, s.139
<b>Highways</b>	Power to maintain footpaths and bridle-ways	Highways Act 1980, ss.43, 50
	Power to light roads and public places	Parish Councils Act 1957, s.3 Highways Act 1980, s.301
	Provision of litter bins	Litter Act 1983, ss.5, 6

	Powers to provide parking places for bicycles and motor-cycles, and other vehicles	Road Traffic Regulation Act 1984, ss.57, 63
	Power to enter into agreement as to dedication and widening	Highways Act 1980, ss.30, 72
	Power to provide roadside seats and shelters	Parish Councils Act 1957, s.1
	Consent of parish council required for ending maintenance of highway at public expense, or for stopping up or diversion of highway	Highways Act 1980, ss.47, 116
	Power to complain to highway authority as to unlawful stopping up or obstruction of highway or unlawful encroachment on roadside wastes	Highways Act 1980, s.130
	Power to provide traffic signs and other objects or devices warning of danger	Road Traffic Regulation Act 1984, s.72
	Power to plant trees and lay out grass verges etc. and to maintain them	Highways Act 1980, s.96
<b>Investments</b>	Power to participate in schemes of collective investment	Trustee Investments Act 1961, s.11
<b>Land</b>	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
<b>Litter</b>	Provision of receptacles	Litter Act 1983, ss.5, 6
	Power to take enforcement action against those that litter	Cleaner Neighbourhoods and Environment Act 2005
<b>Mortuaries and postmortem rooms</b>	Powers to provide mortuaries and postmortem rooms	Public Health Act 1936, s.198
<b>Open spaces</b>	Power to acquire land and maintain	Public Health Act 1875, s.164 Open Spaces Act 1906, ss.9, 10
<b>Parish documents</b>	Powers to direct as to their custody	Local Government Act 1972, s.226
<b>Public buildings and village hall</b>	Power to provide buildings for public meetings and assemblies	Local Government Act 1972, s.133
<b>Public conveniences</b>	Power to provide	Public Health Act 1936, s.87
<b>Sustainable communities</b>	Right of representation on a panel of representatives to be consulted on proposals that would contribute to sustainable communities	Sustainable Communities Act 2007
<b>Telecommunications facilities</b>	Power to pay public telecommunications operators any loss sustained providing telecommunication facilities	Telecommunications Act 1984, s.97
<b>Town and country planning</b>	Right to be notified of planning applications	Town and Country Planning Act 1990, Sched.1, para. 8
<b>Tourism</b>	Power to encourage visitors and provide conference and other facilities	Local Government Act 1972, s.144
<b>Traffic calming</b>	Powers to contribute financially to traffic calming schemes	Highways Act 1980, s.274A

<b>Transport</b>	Powers in relation to car-sharing schemes, taxi fare concessions and information about transport	Local Government and Rating Act 1997, s.26, 28, 29
	Powers to make grants for bus services	Transport Act 1985, s.106A
<b>War memorials</b>	Power to maintain, repair, protect and alter war memorials	War Memorials (Local Authorities' Powers) Act 1923, s.1
<b>Water supply</b>	Power to utilise well, spring or stream and to provide facilities for obtaining water from them	Public Health Act 1936, s.125
<b>Well-being</b>	Power to promote well-being of the area (for eligible councils, Wales only)	Local Government Act 2000 s.2

## Local government functions & responsibilities

This section sets out where responsibilities lie for specific functions between the three tiers of local government. Please note that both the county and district functions are discharged by single authorities in the case of metropolitan district councils and unitary councils.

<u>County Councils</u>	<u>District Councils</u>	<u>Parish Councils</u>
Monitoring Officer for County Members only	Monitoring Officer Ethics & Probity for District & Parish Members	
<b>Education</b> Most schools Special education Nursery, adult, community <b>Personal Social Services</b> Securing provision for the elderly, children and those with disabilities (including social care and health and residential care) Inspection Services	<b>Housing</b> Management and maintenance of council houses Working with Housing Associations (known as Registered Social Landlords) Housing advice Renovation grants Homelessness Unfit housing Residential care	<b>Clocks</b>
	<b>Cemeteries and Burials, Crematoria</b>	<b>Closed Churchyards Burials/Cemeteries</b>
<b>Planning</b> Strategic planning/structure plans Minerals and waste planning Historic buildings	<b>Planning</b> Local Development Framework Development control (Planning applications and enforcement) Advertising consent Historic buildings Conservation areas Tree preservation	Planning – as consultees
<b>Highways/Transport</b> Public transport Highways and parking Traffic management Footpaths and bridleways Transport planning Street lighting	<b>Highways/Transport</b> Unclassified roads Off-street car parking Traffic management Footpaths and bridleways Road safety Local transport plans Street lighting Street naming	<b>Bus shelters</b> <b>War and other memorials</b> <b>Street lighting</b>
<b>Emergency Planning</b>	<b>Emergency Planning</b>	
<b>Recreation</b> Parks and open spaces Support for the arts Archives and Record Office Museums/Art Galleries	<b>Recreation</b> Parks, open spaces and halls Swimming pools and leisure centres Support for the arts Museums and art galleries	<b>Public Open Spaces</b> <b>Village Halls</b> <b>Playing fields</b> <b>Museums and the Arts</b>

Economic Development

Economic Development

Tourism Development

Tourism Development

Tourism Development

Environmental Services

Refuse disposal

Recycling

Gypsy sites Trading Standards

Environmental Services

Refuse collection/street cleansing

Recycling

Management of travellers/gypsy sites

Food safety

Public conveniences

Markets

Dog and pest control

Noise abatement

Health & Safety Seats

Licensing

Litter bins and litter clearance

Local charities

Markets

Public seating

Licensing – as consultees

Registration of Births, Marriages and Deaths

Allotments

Allotments

Library & Information Service

Electoral Registration/Elections

Council Tax and Business Rate collection

Grants to voluntary bodies

Grants to voluntary bodies

Grants to voluntary bodies

Help with Lottery Applications

Community Planning

Community Planning Community Safety (anti-social behaviour, alcohol byelaws)

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# Spending the levy

## What can the Community Infrastructure Levy be spent on?

The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities (for further details, see [section 216\(2\) of the Planning Act 2008](#), and [regulation 59](#), as amended by the [2012](#) and [2013 Regulations](#)). This definition allows the levy to be used to fund a very broad range of facilities such as play areas, open spaces, parks and green spaces, cultural and sports facilities, healthcare facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant plan (the Development Plan and the London Plan in London). Charging authorities may not use the levy to fund affordable housing.

Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed.

The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

In London, the regulations restrict spending by the Mayor to funding roads or other transport facilities, including Crossrail, to ensure a balance between the spending priorities of the London boroughs and the Mayor.

Paragraph: 144 Reference ID: 25-144-20190901

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