A report to Kempley Parish Council regarding

Kempley Village Hall

in the matters of
Ownership
and a
Public Works Loan

by

Councillors Neil J Dransfield and Dr. Bob Earll

28th August 2018

Please direct any comments to:

Kempley Parish Clerk
The Croft, Kempley, Dymock, GL18 2BU
Email: kempleyparishclerk@gmail.com
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Acknowledgements
We would like to thank all who have made this document possible and those who have contributed towards it, especially: Kempley Parish Council, the Kempley Village Hall Trust, Prof. Basil Jarvis, Pen Jones and Arin Spencer. The information and help provided were invaluable.

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1. INTRODUCTION:

1.1. At its July 19\textsuperscript{th} 2018 meeting Kempley Parish Council (KPC) agreed to document, by the end of August 2018, the status of ownership of Kempley Village Hall (KVH), regarding the feasibility of a Public Works Loan.

1.2. The Kempley Community Led Plan and other work had highlighted the need for KVH to be refurbished. Several initiatives had applied for funds but it had become increasingly clear that unlike the period 2000-2010 (when HLF funds were available), there were no straightforward funding sources that would cover KVH. The idea that the KPC could take out a Public Works Loan (Ministry of Housing, Communities and Local Government (MHCLG)) to fund the refurbishment was proposed to KPC in 2017, with the suggestion that such a loan should be paid for from the Precept.

1.3. This report describes the realities of ownership and the law so far as can be established without independent legal opinion. KPC’s objective is to document information so that it can be shared with the community: we have sought to answer a number of questions, to which we present our findings.

1.4. It is important to remember that this report needs to be read as a whole, taking on board all the questions and items considered, conclusions reached and recommendations made.

1.5. To assist with this report we have held a meeting with Pen Jones (who has been researching the Public Works Loan on behalf of the KVHT, see Appendix E), and Basil Jarvis has prepared a note for our use (see Appendix A).

1.6. KPC agreed on the July 19\textsuperscript{th} meeting that it would join with the KVH Trust to form a joint working group. That work has now commenced.
2. QUESTIONS:

2.1 Who owns Kempley Village Hall?

Items Considered:

- Ownership of KVH is fundamental. It goes to the heart of items to consider because KPC needs to understand the risks to it, and benefits to the community, of any financial commitment. This is important regardless of whether a commitment is to a building, to land, or involves any other financial matter;

- KPC also needs to review and confirm the legal framework and powers it may have regarding taking out a loan on a building where a third party (the church) has ownership;

- Prof. Basil Jarvis has prepared a note (Appendix A) which outlines the background to the ownership of KVH;

- In confirmation of the ownership question, we have obtained and include the Land Registry Title for KVH (see Appendix B), and

- Although the original process, documentation and gifting of KVH by the Beauchamp Estate appears to have raised questions by some, it appears to us that further questions on those matters would be time consuming, probably very expensive, and may well not change what we have established.

Conclusion and Recommendations 1:

- Proof of ownership, by Land Registry Title GR354654, is compelling evidence;

- In our opinion, given that evidence, looking further back into the history of ownership is not an avenue worth pursuing;

- We conclude that there is no doubt that it is the church – the Gloucester Diocesan Trust – who own KVH and its land, and

- Our recommendations are that:
  i. there are no justifiable grounds to question the ownership status, and
  ii. for the purposes of this report ownership of KVH by the Church is accepted by all.
2.2 Does KPC currently have a General Power of Competence regarding a loan?

Items Considered:

- The General Power of Competence (GPC) can be invoked by local authorities to undertake works that are legal, (works that it is empowered to do, see Appendix C). We believe this would include applying for a Public Works Loan;

- GPC arises under the Localism Act 2011, when satisfying the conditions in “Parish Councils (General Power of Competence) (Prescribed Conditions)” Order 2012/965;

- Essentially, two thirds of its councillors must be elected and the Clerk must have completed the CiLCA qualification (which could take up to a year to complete).

Therefore, to our understanding, there is a basic problem at present. Although a formal process for the replacement of resigned councillors was advertised earlier this year, the three remaining councillors were obliged to co-opt four new councillors to achieve KPC’s full complement of seven. Therefore, in order to meet GPC requirements, KPC would need have elections for its councillors. The earliest that could take place is May 2019.

- Additionally, the Clerk must undertake and complete training: that is dependent on availability and is likely to be beyond May 2019.

Conclusion and Recommendations 2:

- The rules regarding GPC are to be complied with by KPC to invoke the Localism Act 2011. That is not possible at present and so KPC cannot invoke a General Power of Competence;

- A loan cannot be applied for until the situation changes and both the elections scheduled for May 2019, and the relevant training, have been completed;

- Our recommendations are that:
  
  i. Elections for councillors proceed in due course, and
  
  ii. Training for the Clerk is completed.
2.3 Can KPC secure a loan for a public building?

Items Considered:

- There is clear view, supported by the various amendments and additions to earlier Local Authorities legislation (Local Government Acts 1894, 1972, 1976 & 2003, Localism Act, 2011) that local authorities including parish councils can secure Public Works Loans for legal activities including supporting capital expenditure on buildings;
- Appendix D for example quotes some relevant Acts, more can be found in Appendices E and F, and on the Government Website www.legislation.gov.uk, and
- A process for a Public Works Loan must be carried out. That process is outlined at Appendix J.

Conclusion and Recommendations 3:

- There is a legal basis for KPC to seek a Public Works Loan to meet capital expenditure for a public building;
- We recommend that when a loan is to be pursued advice is sought, initially through GAPTC but perhaps also including legal advice, to ensure that all criteria are met before a Parish Council motion to apply for a loan is considered;
- We recommend that the presentation referred to in Appendix J is attended by both KPC and KVH Trust representatives, as at present planned, for 20th September 2018;
- We further recommend that the KPC representative(s) formally ask at that presentation about lending for a project to a Church Hall, and they report back to KPC, and
- The process described in Appendix J is followed.

2.4 Can KPC secure a Public Works Loan for a building that it does not own?

Items Considered:

- Parish Councils can execute works or contribute towards the expense of works and this is covered in the Local Government Act 1894 … the specific
text is …. *any parish property* …. Pt I: 8(1), (i) and (k)]. (see Appendix C), and

- Legal Topic Note (PDF) LTN 21: “Local Council Help for Village Halls”: August 2012 develops this further. PC’s can borrow on a grant for capital works for to the fabric of a building, but cannot borrow for running expenses;
- The principles for a loan are set out in the Public Works Loan Board Note LC2.

**Conclusion and Recommendations 4:**

- Our conclusion is that KPC is able to raise a loan for capital works, providing it follows correct procedure and is for works permitted by the law.

**2.5 Can KPC secure a Public Works Loan for a building owned by the church?**

**Items Considered:**

- This is a key question and the matter of ongoing debate, with different views being expressed by well-placed people providing different opinions;
- The Local Government Act 1894 has a number of clauses which are still current, one of those (see below and Appendix C) covers Councils spending money on what many describe as “church buildings”. The Act is important as it is the basic Act of Parliament that empowers or enables Parish Councils to do certain things (Parish Councils only have powers set down by the law). The important provision is the power:

  “to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity”;

- More recent Acts of Parliament (see 2.3 above) may give Parish Councils wider powers, but there appears to be a principle of the law which does not remove the prohibition relating to “affairs of the Church”, even if wider general powers are conferred by the later Acts mentioned in (2.3), or by any other Act. The principle is set out by NALC at Appendix D, and perhaps can be summarised as “in law a specific provision or prohibition overrides one of a general nature”. ;
• The Government did, a little while ago, considered clarifying the law when contrasting later Acts with the 1894 Act (see Appendix G) but, importantly, has not done so. That doubt has been voiced, but specific repeal of the 1894 Act not undertaken, is compelling evidence to us that the original Act remains in force;

• There are a number of sources we have been shown and explored including:
  i) The National Association of Local Councils Guidance (NALC) – thinks that there is no certainty regarding legal validity regarding loans on church buildings (see Appendix D);
  ii) ACRE Association of Rural England – Their view is that the issue is unresolved (see Appendix E);
  iii) Churchcare – think that LAs ought to be able to invest in church buildings (see Appendix F), and
  iv) General background to this debate (see Appendix G), and
  v) Public Works Loan Board Lending (see Appendix J).

Additionally, the matter of Planning Application Fees is included at Appendix H and other useful external links are provided at Appendix K, and

• The Village Hall has a Lease taken out by “Kempley Village Hall” [or perhaps the Trustees] (Appendices A & B), but it is understood that the Church holds a reserved function on the premises (Appendix A: “Whilst the diocese was agreeable in principle, such a sale cannot go ahead unless the KPCC no longer requires the use of the premises – which it does”. The Church therefore holds the Lease and the Village Hall and unequivocally has a use “relating to affairs of the Church”. There is the receipt of leasehold income, plus an operational use of the premises by the Church. The latter is separate from the leaseholder’s use, and both benefit the church.

Conclusion and Recommendations 5:

• It is our view that at present KVH must be considered as having uses “relating to affairs of the church”, a viewpoint supported by our understanding of the NALC and ACRE guidance. This means that KPC has no legal certainty at present to secure a Public Works Loan to benefit KVH;

• KVH Trust may consider a further formal approach to the Diocese regarding purchase of the freehold, but that is a matter outside the remit of KPC;
• There may be other avenues and options for KVH Trust to consider and pursue regarding immediate and long term needs for the refurbishment of KVH, and
• It is our view that KPC is not the relevant body to make an approach to the Diocese regarding the freehold, as there is currently the interest of KVH Trust through its lease.

3. **SUMMARY:**

This is a general summary, please refer to the conclusions and recommendations set out in Section 2.

3.1 The Church currently owns KVH. The ownership could change, but only by agreement and mutual benefit. That situation may not change during the currency of the present Lease, but KVH Trustees may wish to make further formal enquiries (Section 2.1 above);

3.2 Irrespective of the ownership status of KVH, KPC are at present unable to initiate or progress a loan application for capital works relating to it. That situation will change in the foreseeable future following action by KPC and the Clerk (Section 2.2 above);

3.3 In due course KPC would have the power in principle to raise a Loan on works to a building it does not own (see 2.3 and 2.4 above). However, this is subject to (3.4) below;

3.4 Ownership of KVH by the Church is likely to prevent a Public Works Application being viewed as within the Parish Council’s power, whatever the wishes of the community. A loan may be viewed as “illegal” (our word) in the circumstances;

3.5 The law may change (or be clarified), but in view of the time elapsed, and the lack of clarification offered since relevant legislation was passed, we consider the matter may well not change in the foreseeable future (see Section 2.5 and Appendix G);

3.6 There is a significant process to be followed when (or if) all matters referred to above are resolved (see Appendix J). Time must be allowed for that process, which would be after the resolution of the immediate concerns. Engagement with the Community and GAPTC will be fundamental;
3.7 The existence of the NALC guidance (Appendix D) suggests to us that further legal opinion need not be explored unless there is a decision by KPC to proceed further regarding a Public Works Loan application;

3.8 Representatives are to attend and pose questions at the PWLB Presentation on the 20th September 2018 (see Section 2.3), and

3.9 Further information may become available that will change our consideration and therefore the conclusions reached and recommendations made.
4. **DECLARATION**

We have prepared this report as councillors to Kempley Parish Council in accordance with its published Code of Conduct. We have expressed our true and complete opinions as councillors on the matters to which we refer.

Signed

Neil J Dransfield 28th August 2018
Councillor, Kempley Parish Council

Signed

Prof. Bob Earll 28th August 2018
Councillor, Kempley Parish Council
APPENDICES

Introduction

Notes and information used for the report are divided into Appendices, with each Appendix referring to the main section of the report it is relevant to:

APPENDIX A (Section 2.1):

Statement from Professor Basil Jarvis  
9 August 2018

Lay Chairman,  
Kempley Parochial Church Council

OWNERSHIP OF THE KEMPLEY PARISH HALL  
(aka KEMPLEY VILLAGE HALL)

To whom it may concern

The Hall was built at the behest of the 6th Earl Beauchamp in 1876 as a temporary church or Mission Hall. Following construction of the new church of St Edward the Confessor, at the behest of the 7th Earl Beauchamp, as a “Chapel of Ease” that was dedicated in 1903, the temporary church was used as a parish or church hall. In 1919, the Beauchamp family sought to sell their properties in Kempley in order to pay death duties; the sale particulars included both the church and the hall, but these properties were withdrawn from the sale. In or about 1934, the Beauchamp family gave the church and the hall to the Diocese of Gloucester and the church was formally consecrated. The church of St Edward the Confessor was registered for marriages in 1943 and became the parish church in 1975 following the declaration of redundancy of the old church of St Mary, Kempley with its subsequent transfer to the Secretary of State for the Environment.

Over the years the hall has been, and still is, used both for religious purposes and for local village activities and has remained in the ownership of the church to the present day. At no time was ownership of the hall transferred to the civic parish or any other organisation (see Comment below). In the late 1980’s the hall was in urgent need of updating and repair and a proposal was made to lease the church hall to a newly formed charity, under the terms of the Albemarle Scheme established by the Charity Commissioners.

On 26 February 1988 a sworn declaration was made by a life-long resident of the parish, Dora Isabel Smallman, to confirm that the hall was the property of the parish and a vesting declaration was made by the Diocese of Gloucester. The Kempley Village Hall Trust (KVHT) was established as a registered charity (number 1005524) and the Albemarle lease was duly signed on 15 January 1990 for a period of 35 years (copy attached). During the period of the lease a number of alterations and improvements were made to the hall, all of which had been approved by the Parochial Church Council of the day. In or about 2014, new plans were developed by KVHT for further improvements to the hall and approved by the KPCC; unfortunately, attempts to

1 Throughout this paper all references to ‘Parish’ relate to the Ecclesiastical Parish of Kempley and not to the Civic Parish which is referred to expressly.
obtain grants for the works were unsuccessful partly because of the short remaining timespan of the lease. The KPCC and the Diocese were approached regarding the termination of the lease and the award of a new lease. In due course a new lease for a further period of 35 years was approved by the Charity Commissioners and signed by both parties on 25 February 2016.

Recently it has been suggested that the civic parish or the KVHT might purchase the hall from the diocese. Whilst the diocese was agreeable in principle, such a sale cannot go ahead unless the KPCC no longer requires the use of the premises – which it does. An alternative suggestion is to seek a significant extension to the period of the lease; a letter has been sent to the Charity Commissioners on behalf of the KPCC and the KVHT seeking their approval in principle.

Revised plans for renovation of the hall have been developed by the KVHT and have been approved in principle by KPCC, subject only to a requirement for various amendments to the plans.

Comment: Over the years some confusion has arisen regarding the ownership of the parish (sic church) hall due largely, in my opinion, to misunderstanding or misrepresentation of the term ‘parish’. The Church (or Ecclesiastical) Parish is defined as a geographic area the population of which is ministered to by its incumbent. By contrast, in England, a civil (or administrative) parish is defined by a territorial designation and is the lowest tier of local government. There is no doubt in my mind that the evidence shows that the hall belongs to the ecclesiastical parish of Kempley. Ownership of the hall is recognized by both the Diocese and the Charity Commissioners and the title of the land on which it is situated is registered to the Diocese (Land Registry ref. GR 354654). Whether the church hall is a ‘church building’ as defined in the now outdated Local Government Act 1894 is an open question but current opinion is that it does. The Church Buildings Council is of the opinion that Localization Act 2011 and the Local Government Act 2012 permit local authorities, including Parish Councils, to contribute to the maintenance of church buildings under specific circumstances largely related to ‘public benefit’ - see http://www.churchcare.co.uk/images/Churches/Local-Authority-Investment-in-Church-Buildings-Guidance.pdf. Pending the outcome of the current assessment, it would not seem possible for the Kempley Parish Council to provide funds towards purchase, maintenance or renovation of the Village Hall at this time.

Prof Basil Jarvis
Lay Chairman,
Kempley Parochial Church Council

9 August 2018
APPENDIX B (Section 2.1):

The Land Registry Title for the Village Hall

Title Number : GR354654
This title is dealt with by HM Land Registry, Gloucester Office.

The following extract contains information taken from the register of the above title number. A full copy of the register accompanies this document and you should read that in order to be sure that these brief details are complete. Neither this extract nor the full copy is an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy.

This extract shows information current on 13 AUG 2018 at 09:51:28 and so does not take account of any application made after that time even if pending in HM Land Registry when this extract was issued.

REGISTER EXTRACT

<table>
<thead>
<tr>
<th>Title Number</th>
<th>: GR354654</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address of Property</td>
<td>: Church Hall, Kempley, Dymock (GL18 2BF)</td>
</tr>
<tr>
<td>Price Stated</td>
<td>: Not Available</td>
</tr>
<tr>
<td>Registered Owner(s)</td>
<td>: GLOUCESTER DIOCESAN TRUST (Co. Regn. No. 113076) of Church House, College Green, Gloucester GL1 2LY.</td>
</tr>
<tr>
<td>Lender(s)</td>
<td>: None</td>
</tr>
</tbody>
</table>
Title number GR354654

This is a copy of the register of the title number set out immediately below, showing
the entries in the register on 13 AUG 2018 at 09:51:28. This copy does not take account
of any application made after that time even if still pending in HM Land Registry when
this copy was issued.
This copy is not an ‘Official Copy’ of the register. An official copy of the register
is admissible in evidence in a court to the same extent as the original. A person is
entitled to be indemnified by the registrars if he or she suffers loss by reason of a
mistake in an official copy. If you want to obtain an official copy, the HM Land
Registry web site explains how to do this.

A: Property Register

This register describes the land and estate comprised in
the title.

GLOUCESTERSHIRE : FOREST OF DEAN

1  (18.05.2011) The Freehold land shown edged with red on the plan of the
above title filed at the Registry and being Church Hall, Kempley,
Dymock (GL18 2BP).

B: Proprietorship Register

This register specifies the class of title and
identifies the owner. It contains any entries that
affect the right of disposal.

Title absolute

1  (18.05.2011) PROPRIETOR: GLOUCESTER DIOCESAN TRUST (Co. Regn. No.
113076) of Church House, College Green, Gloucester GL1 2LY.

2  (18.05.2011) RESTRICTION: No disposition by the proprietor of the
registered estate to which section 36 or section 38 of the Charities
Act 1993 applies is to be registered unless the instrument contains a
certificate complying with section 37(2) or section 39(2) of that Act
as appropriate.

C: Charges Register

This register contains any charges and other matters
that affect the land.

1  (18.05.2011) The land is subject to the lease set out in the schedule
of leases hereto.

Schedule of notices of leases

1  06.04.2016       Kempley Village Hall       31.03.2016
From 1.5.2015
for 35 years

End of register
APPENDIX C (Sections 2.4 & 2.5):

Local Government Act 1894

This is an early Act that provides powers for Parish Councils to operate: it includes some restrictions. There are many subsequent Local Government Acts, but these provisions of the 1894 Act remain:

Part I: Parish Meetings and Parish Councils

1—4.................................

Powers and Duties of Parish Councils and Parish Meetings

8. Additional powers of parish council.

(1) A parish council shall have the following additional powers, namely, power—

(a) ...........................................

(b) ..........................................

(c) ..........................................

(d) ... F4 sections one hundred and eighty-three to one hundred and eighty-six of the M1Public Health Act, 1875, shall apply. ......... ............................................ F4 as if the parish council were a local authority within the meaning of those sections; and

(e)(f)..........................................

[(g) to acquire by agreement any right of way, whether within their parish or an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof; and]

(h) ..........................................

(i) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity; and

(k) to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned.
APPENDIX D (Section 2.5):

National Association of Local Councils (NALC)

NALC  1 JANUARY 2018: L01-18
FINANCIAL ASSISTANCE TO THE CHURCH

Introduction

The purpose of this briefing is to consider whether a parish council or, in Wales, a community council may provide financial assistance to the church (or other religious bodies).

Relevant legislation.

s.6(1) (a) of the Local Government Act 1894 (“1894 Act”) transferred powers from the Vestry and Churchwardens to the newly formed parish councils “except so far as relates to the affairs of the church or to ecclesiastical charities.”

s.6(1) (c) of the 1894 Act confirms the powers, duties and liabilities conferred on parish councils include “the holding and management of parish property “not being property relating to affairs of the church or held for an ecclesiastical charity”.

s.8 of the 1894 Act gives parish councils further powers including the power “to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of the powers in s.6, “not being property relating to affairs of the church or held for an ecclesiastical charity” and further “to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned”.

It should be noted that the prohibition relates to the nature of the property concerned not to the use to which that any funding will be put. Thus, funding to make a church hall suitable for meetings of the guides and scouts is still prohibited because the building is church property.

Despite references in the above provisions to parish councils, the 1894 Act applies to both England and Wales. The powers in the 1894 Act prohibit councils’ involvement in property relating to the affairs of the church e.g. the maintenance or improvement of buildings or land or contributing to the costs. The question often asked is whether that prohibition still applies or is it overridden by legislation made after the 1894 Act. Examples of such legislation are:

• s.214(6) of the Local Government Act 1972 (“the 1972 Act”) which provides that councils which are burial authorities may contribute to another person’s expenses (e.g. the PCC or synagogue) in providing a cemetery in which residents in the council’s area may be buried.
• s.215 of the 1972 Act permits a council to maintain a closed churchyard.
• s.137 of the 1972 Act which allows a council to incur expenditure for any purpose except one which is subject to a statutory prohibition, restriction or limitation.
• s.138B of the 1972 Act empowers a parish council to support or facilitate a religious event.
• The General Power of Competence in s.1 of the Localism Act 2011 (“the 2011 Act”) is available to eligible parish councils that satisfy the conditions in Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965.
NALC views there is an accepted legal principle, applied by the courts, which is that in interpreting what an Act of Parliament means, a specific provision overrides one of a general nature. In other words, if two statutory provisions are in conflict or overlap, the detailed provision will prevail over the more general one. In applying this principle, NALC’s views are as summarised below:

Ss.137 and 138B of the 1972 Act and s.1 of the 2011 Act constitute general provisions and do not override the specific prohibitions in s.8 of the 1894 Act. S.137 expressly provides that expenditure cannot be incurred purposes which are subject to a statutory prohibition, restriction or limitation. S.2 of the 2011 Act confirms that the general power of competence does not allow an eligible parish council to get round any statutory prohibition, restriction and limitation which existed before the general power was introduced. S.214(6) of the 1972 Act which permits a council as a burial authority to contribute to the expenses of anyone else providing a cemetery, appears to overlap with the specific provision in s.8 of the 1894 Act which prevents a council from contributing to the affairs of the church and, in NALC’s view, the specific provision would prevail.

S.215 of the 1972 Act is a specific provision in respect of the responsibilities of a council (whether or not a burial authority) to maintain a closed churchyard which, in NALC’s opinion, thus overrides the prohibitions in ss. 6 and 8 of the 1894 Act.

Summary

There is no current case law to resolve the question of whether or not the 1894 Act restrictions override the provisions in later Acts of Parliament and ultimately it would be for the courts to determine the extent of any prohibition from the 1894 Act. Any court action started so as to resolve this point is likely to be expensive and time consuming. It would, of course, be possible for Parliament to clarify the point with a specific provision in new legislation, however, the Government’s current view on the legal issues is that there is no need for any further legislation as they believe the 1894 Act restrictions do not override the provisions in later Acts of Parliament.

Whilst there is no consensus on this issue, a council that considers making a payment in these circumstances needs to consider whether it is prudent to take a course of action that it cannot be certain is legally valid.

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APPENDIX E (Section 2.5):

Opinion from Deborah Clarke Action for Communities in Rural England (ACRE) to Pen Jones 2nd August 2018

From: Deborah Clarke (ACRE) <d.clarke@acre.org.uk>
Date: Thu, 2 Aug 2018 at 17:04
Subject: RE: Kempley Village Hall
To: Penelope Jones <penjones134@gmail.com>

Hello Pen

The key legislation is the Local Government Act 1894, Page 11 paragraph 8(1) . The National Association of Local Councils advises, in their guidance, that Parish Councils cannot fund Church property. The Church of England believes otherwise.

Churchcare (that provides information and advice to churches) sets out very succinctly the current situation here: http://www.churchcare.co.uk/about-us/campaigns/news/1083-local-authority-investment-in-church-buildings

It is accepted that there is confusion on this issue and referred to the Taylor Review: Sustainability of English Churches and Cathedrals of December 2017. http://www.hrballiance.org.uk/consultations-2/cofe-buildings-sustainability/

It included as one of its recommendations (page 31) the following which set out the situation very clearly:

**Legal Clarification**

The law should be clarified, whether through legislative change or the issue of guidance, to establish that local authorities are not prohibited from awarding funding to churches.

Section 8 of the Local Government Act 1894 confers a number of additional powers on a parish council. Among these is the power to execute works subject to the condition that they do not relate to property relating to the affairs of the church.

The Local Government Act 1972, however, permits a local authority (whether at county, district or parish council level) to contribute towards the maintenance, repair or adaptation of churches and even possibly levy a parish rate on the basis that the expenditure would be in the interests of, and bring benefits to, some or all of the inhabitants of the area.
Evidence submitted to the Review suggested that there is considerable confusion as to whether the 1972 Act supersedes the Local Government Act 1894, and that the 1894 Act is still perceived as a barrier, preventing investment in church buildings by local authorities.

Clarification on this point should be given, whether by repealing section 8 of the 1894 Act, or by the issue of guidance. This should clarify that local authorities can invest in church buildings in accordance with Section 137 of the Local Government Act 1972.

Additionally, repeal or the issue of guidance should clarify that certain parish councils are also able to fund church buildings using powers contained in the Localism Act 2011. The Act allows certain parish councils, as long as they meet certain criteria, to pass a resolution which allows them to have the benefit of the so-called “General Power of Competence”.

An eligible parish council is one in which at least two-thirds of the members have been elected (i.e. not co-opted), and in which the clerk has completed one of a specified range of training courses. Having passed such a resolution, the relevant parish council would have the power to fund repairs and improvements and changes to church property (albeit it would have to take such a decision in line with its proper internal processes).

I hope this is helpful Regards Deborah
APPENDIX F (Section 2.5):

Churchcare.co.uk:

The Church Buildings Council is aware that the National Association of Local Councils has recently circulated a briefing note in which they re-state their belief that the 1894 Local Government Act prevents parish councils from spending money on churches. This document lays out the views of the Church Buildings Council on this matter.

The Church Buildings Council, following legal advice, has concluded that the provisions of the Localism Act 2011 and the Local Government Act 1972 allow for all local authorities, including Parish Councils, to contribute to the upkeep of church property under certain circumstances – mainly related to the public benefit achieved.

A comprehensive guidance document, can be viewed/downloaded here.

Local Authority Investment in Church Property

1. The Church Buildings Council is aware that the National Association of Local Councils has recently circulated a briefing note in which they re-state their belief that the 1894 Local Government Act prevents parish councils from spending money on churches. This document lays out the views of the Church Buildings Council on this matter.

2. The Church Buildings Council, following legal advice, has concluded that the provisions of the Localism Act 2011 and the Local Government Act 1972 allow for all local authorities, including Parish Councils, to contribute to the upkeep of church property under certain circumstances – mainly related to the public benefit achieved.

3. Our view is supported by the 2017 English Cathedral and Church Buildings Sustainability Review (p.31-32), commissioned by HM Government: “The law should be clarified, whether through legislative change or the issue of guidance, to establish that local authorities are not prohibited from awarding funding to churches”. Section 8 of the Local Government Act 1894 confers a number of additional powers on a parish council. Among these is the power to execute works subject to the condition that they do not relate to property relating to the affairs of the church. The Local Government Act 1972, however, permits a local authority (whether at county, district or parish council level) to contribute towards the maintenance, repair or adaptation of churches and even possibly levy a parish rate on the basis that the expenditure would be in the interests of, and bring benefits to, some or all of the inhabitants of the area. Evidence submitted to the Review suggested that there is considerable confusion as to whether the 1972 Act supersedes the Local Government Act 1894, and that the 1894 Act is still perceived as a barrier, preventing investment in church buildings by local authorities. Clarification on this point should be given, whether by repealing section 8 of the 1894 Act, or by the issue of guidance. This should clarify that local authorities can invest in church buildings in accordance with Section 137 of the Local Government Act 1972. Additionally, repeal or the issue of guidance should clarify that certain parish councils are also able to fund church buildings using powers contained in the Localism Act 2011. The Act allows certain parish councils, as long as they
meet certain criteria, to pass a resolution which allows them to have the benefit of the so-called “General Power of Competence”. An eligible parish council is one in which at least two-thirds of the members have been elected (i.e. not co-opted), and in which the clerk has completed one of a specified range of training courses. Having passed such a resolution, the relevant parish council would have the power to fund repairs and improvements and changes to church property (albeit it would have to take such a decision in line with its proper internal processes).”

4. The Church Buildings Council is working with the government to implement this recommendation. In the meantime, we believe the intent behind it clearly indicates that parish councils and local authorities can invest in church buildings under two separate acts, both of which supersede the 1894 Act.

5. We encourage churches to work with their local council(s) to establish a sensible local understanding of public benefits derived from any such investment. This could include clear paths through the churchyard, maintenance of an attractive green space, a building fit to provide public services such as playgroups etc.

6. Government support for local investment in churches as community assets has a long history. Back in 2009 the Church of England worked with the Government to produce Churches and Faith Buildings: Releasing the Potential. In a document that strongly supported church buildings as community assets, this statement stands out: “Faith communities bring distinctive resources to local communities, supporting and empowering individuals, embracing a rich diversity of experience, skills and people motivated to change their communities for the better. Typically deeply rooted, they are there ‘for the long term’, having unusual qualities of resilience and commitment, particularly in deprived areas.”

7. The report recognises that church property, including buildings such as church halls, and churches open for community use, form important community assets. It goes on to say: “At a time of financial stringency when the green agenda is growing in significance it obviously makes sense to maintain and develop such a significant national asset. It would cost billions to replicate the country wide social infrastructure which already exists in the network of buildings the Church of England manages on behalf of the whole community. Any assistance would of course depend on a proven determination to equip the churches for wider community access but a relatively modest investment could yield large dividends.”

8. The Church Buildings Council will continue to promote the value of church buildings to their local communities, and the appropriateness of local partnerships, often involving local authorities, to open them up for community use. We know of many local authorities that already recognise the benefits of investing in and alongside their local church and do not accept any arguments for this stopping.
APPENDIX G (Section 2.5):

General Background to the debate on whether local authorities can invest in church buildings – two websites.

This issue was posted a little while ago ‘An End to Restrictions on Funding Church Buildings?’ and has not been repealed.

Posted: 29 May 2014 14:37 by admin

As many will know, the 1894 Local Government Act created Parish Councils, and some of the legislation from 120 years ago remains to this day. This includes a prohibition on Parish Councils contributing towards the maintenance of church buildings.

Local Government Minister, Brandon Lewis MP, has revealed that the Government is considering revoking the prohibition, contained in the Local Government Act 1894, on parish councils contributing towards the maintenance of church buildings. In response to a letter from Nigel Adams MP (thanks to SLCC’s raising the issue), the Minister said that the prohibition also relates to property held by other denominations and faiths in certain circumstances.

However, the Government believes that churches and other religious buildings play a pivotal role in our communities. It has just released £20M of funding to support Roman Catholic and Church of England Cathedrals and has also provided funding for parish churches through the Heritage Lottery Fund.

Mr Lewis has confirmed that he will be examining the possibilities and practicalities of revoking this particular piece of legislation

Arin: 19/07/18

Depending on your interpretation of the law, Parish Councils are currently prohibited from granting financial aid to property owned by the Church

There are two articles on this:
1. May a parish council grant-aid a place of worship?
2. Use of church halls for village hall and other charitable purposes.

The Church naturally disagrees with the interpretation but there are two known cases where an auditor has told the Parish Council that they may not give money to a local church despite the express wish of the council to do so.
APPENDIX H (Section 2.5):

PlanningPermission Fee

A local council pays only half the cost of fees for planning applications by virtue of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, (Sl.193) (as amended), whereas a village hall committee must pay the full fee. A council can therefore help a village hall needing planning permission by making an application in its own name instead. Planning permission is granted for the land or premises concerned and does not apply to the individual applying, so there is no need for the council to apply on behalf of the village hall or its agent.

The council may choose to bear the reduced cost of the fee or reclaim it from the village hall committee.

The Local Government Act 1972, however, permits a local authority (whether at county, district or parish council level) to contribute towards the maintenance, repair or adaptation of churches and even possibly levy a parish rate on the basis that the expenditure would be in the interests of, and bring benefits to, some or all of the inhabitants of the area.

Evidence submitted to the Review suggested that there is considerable confusion as to whether the 1972 Act supersedes the Local Government Act 1894, and that the 1894 Act is still perceived as a barrier, preventing investment in church buildings by local authorities.

Clarification on this point should be given, whether by repealing section 8 of the 1894 Act, or by the issue of guidance. This should clarify that local authorities can invest in church buildings in accordance with Section 137 of the Local Government Act 1972.

Additionally, repeal or the issue of guidance should clarify that certain parish councils are also able to fund church buildings using powers contained in the Localism Act 2011. The Act allows certain parish councils, as long as they meet certain criteria, to pass a resolution which allows them to have the benefit of the so-called “General Power of Competence”.

An eligible parish council is one in which at least two-thirds of the members have been elected (i.e. not co-opted), and in which the clerk has completed one of a specified range of training courses. Having passed such a resolution, the relevant parish council would have the power to fund repairs and improvements and changes to church property (albeit it would have to take such a decision in line with its proper internal processes).
APPENDIX J (Sections 2.3 & 2.5):

Public Works Loan Board Lending to Parish, Town and Community Councils

There are guidance notes regarding consultations and procedures that need to be properly carried out before a loan can be applied for to the Public Works Loan Board (PWLB).

PWLB lends to town and parish councils (in England) and town and community councils (in Wales). Applicants must obtain a borrowing approval from the Ministry of Housing, Communities and Local Government (MHCLG) - formerly DCLG, for which they should approach their County Association of Local Councils or, in the case of Welsh councils, the Welsh Government.

https://www.dmo.gov.uk/media/15555/circular-159b.pdf

PWLB will require a completed application form LC1.

All documents should be sent to the Board one week (!) before the loan is required. A guidance note LC2 is available regarding applying and the early repayment of loans.

A presentation will be attended by representatives of both KPC and KVH Trust on the 20th September 2018. It is:

“ACCESS TO GRANTS AND FUNDS: PARISH & TOWN COUNCIL BORROWING” (Tristram Gardner & Shafi Khan: Local Government Funding Policy Team, MHCLG)

The topics will be:

What do we look for in a Borrowing Application?

- Resolution to Borrow;
- Budget;
- Report to Council / Business Case;
- Loan Affordability;
- Precept increase;
- Precept Increase Survey / Public Support, and
- General Project Consultation.

What is Parish and Town Council Borrowing?

- The Local Government Act 2003 enables parish councils to borrow capital monies to fund infrastructure and capital projects;
- All applications to borrow must first be approved by the Secretary of State;
- The Loan Board checks all applications to ensure councils have appropriate public support and robust plans to pay off the loan, and
- It is important to be transparent when taking out a loan.

1. Resolution to Borrow:

- Must be clear and well drafted;
• Must be taken at a full Council Meeting, and
• Should ideally be published on the Council’s Website.

2. Budget:
• Loan repayment provision;
• Draft Budget for the next Financial Year, and
• Access PWLB website for repayment calculation table.

3. Report to Council / Business Case:
• There can be a short report or multiple documents as appropriate;
• The Report must be shared with residents, and
• The Loan Board recognises that each project may be different.

4. Loan Affordability:
• Loan repayments;
• Reserves / other income / Grants, and
• Efficiency Savings

5. Precept Increase:
• Percentage and monetary amount to be stated.

6. Precept Increase Survey / Public Support:
• These involve Online / Paper / Flyers / Public Presentation;
• There should be preferably a minimum period of one month, and a deadline must be included, and
• Materials and results must be carefully documented and submitted.

7. General Project Consultation:
• All the information must be publicised and views / opinion / feedback sought;
• There is no specific minimum period, and
• All results / surveys / views / opinions / feedback is to be collated with the application.

Summary of the Borrowing Process:
A. NALC: Engage with your NALC County Association representative early on for advice;
B. RESIDENTS: Engage with your residents early on, particularly if a Precept increase is involved;
C. NALC: Submit your full application to your NALC County Association for checking and endorsement;
D. PWLB: Apply to PWLB to draw down the Loan in whole or in stages within the 12 month approval, and
E. MHCLG: Submit the full application to MHCLG’s Government Funding Policy Team for approval.
Further Information:


Contact your NALC County Association representative in the first instance, who will be able to send you the official application form and guidance including the “Guide to Parish and Town Council Borrowing in England” document;

Contact your Local Government Funding Policy Team by E Mail: Parish.Borrowing@communities.gsi.gov.uk or by telephone on 0303 444 3132 (Khafi Shan)

APPENDIX K (Section 2.5):

Useful External Links

When using these links, please be aware of points VIII and IX of our Terms of Use.

Ministry of Housing, Communities and Local Government - guidance on the Borrowing Approval System for Parish and Town Councils in England. Enquiries - parish.borrowing@communities.gsi.gov.uk

Welsh Government - guidance on the Borrowing Approval System for Community and Town Councils in Wales

National Association of Local Councils

Lending Arrangement for Loans Provided by the Public Works Loan Board (PWLB) Circular 159 25 May 2018

[END OF REPORT]