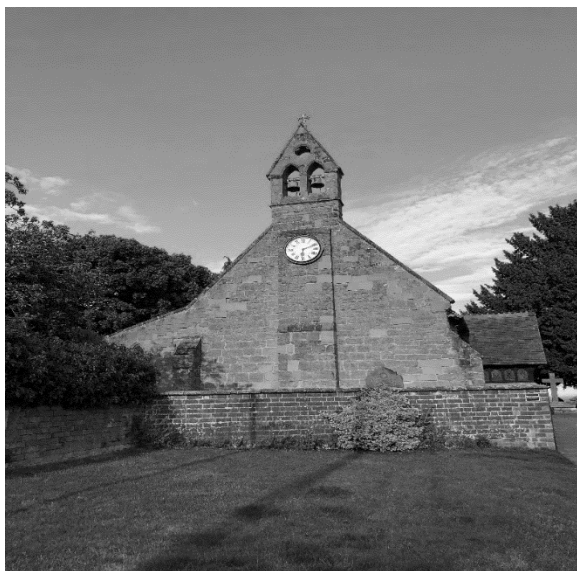


NORTON LINDSEY PARISH COUNCIL

A DISCUSSION PAPER ON CONTINUING GRANT FUNDING FOR HOLY TRINITY 'CHURCHYARD MAINTENANCE' ACTIVITIES

VERSION 2
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CONTENTS

Introduction	3
Recapping The Historical Situation	6
What Has Changed?	10
Considering THE Advice	12
Considering Alternative Routes Of Funding	20
Other Local Councils	24
Options For Consideration	27



INTRODUCTION



INTRODUCTION

Norton Lindsey Parish Council (NLPC), in common with many other English Civil Parish Councils, has for many years made donations to support the maintenance of the Churchyard of its local Parish Church and the Clock installed on that Parish Church.

It became clear in 2020 however that such donations may in fact be *ultra vires* – outside of the legal competence of a Civil Parish Council to make.

Norton Lindsey Parish Council therefore took the view that it could no longer accept grant applications for this type of activity in future financial years. However, the Council also took a decision to carry out further research to determine if this decision must be final or can be readdressed. To carry out this research it established a 'Working Party'.

This document summarises the investigations and research carried out by that 'Churchyard Maintenance Working Party' of Norton Lindsey Parish Council over the course of 2020.

The document does not make a recommendation as to any course of action that Norton Lindsey Parish Council should undertake – rather it is intended to detail the investigations and research in a 'neutral' manner.

Should ultimately a motion be brought before the full Council to continue 'Churchyard maintenance activities', it will be for each Councillor to make up their own minds based on their individual view of the relevant arguments.

Please note that nothing in this document is intended to provide legal advice - rather it is intended to outline relevant factors affecting ongoing discussions.

SUMMARY

- 1) There is a significant difference of opinion between the Government, the Church of England, and various statutory and non-statutory bodies on whether English Civil Parish Councils can provide grants that ultimately will maintain 'Church Property' – including Churchyards and Church Clocks.
- 2) All relevant authorities do however agree that it would be unlawful for any Civil Parish Council to make donations that would support 'religious activity'.
 - a. This type of donation has never been made by NLPC.
- 3) For donations that support maintenance of Churchyards and Clocks on Parish Churches, different bodies have different legal interpretations of the relevant statutes - some interpretations believe such donations are lawful, others that they are not, and some are unclear.
 - a. Donations cannot be made - NALC, WALC
 - b. Donations can be made – Church of England, Diocese of Coventry
 - c. Unclear – House of Commons Library, DCMS (Department for Culture, Media & Sport)
 - d. Needs further investigation/clarification - SLLC (though substantial activities such as a replacement roof would be prohibited).
- 4) There has not been a judicial case that has ruled definitively and unambiguously on the statutes in question.
 - a. Most bodies therefore provide 'advice' or 'views' rather than a clear legal statement.
- 5) Unless and until a definitive 'test case' is brought there appears to be a 'grey area' in the law that is open to interpretation by Parish Councils.
- 6) In the absence of a definitive statement of the law, many Parish Councils (both locally and nationally) have continued to fund similar maintenance activities to that previously undertaken by NLPC, however many others have decided to stop donations in this area.
- 7) Dependent upon the views of Councillors and **if** the matter is readdressed, NLPC could determine:
 - a. Not to accept grant applications for 'Churchyard maintenance' or 'Clock maintenance' activities (as per the last 'minuted' decision of the Council).
 - b. Agree to accept grant applications for 'Churchyard Maintenance' or 'Clock maintenance' activities *until such point that the law is clarified*.
 - i. There is a possibility that NLPC could open itself to the possibility of a Judicial Review finding it to be acting '*ultra vires*' if it decided to continue funding, but the lack of a definitive position of the law means that it is probably unlikely, but not guaranteed, that NLPC could be found to be acting knowingly unlawfully (and there are also many other Parish Councils who would also be at risk of challenge).

RECAPPING THE HISTORICAL SITUATION



HOLY TRINITY CHURCH, NORTON LINDSEY

The Grade II* listed Holy Trinity Church occupies a visually prominent location at the heart of the Norton Lindsey village conservation area.

The Church building, along with its associated Churchyard (including the small Church Room), is 'owned' by the Church of England's Diocese of Coventry. Day-to-day control however lies in the hands of the Parochial Church Council of the Church of England Parish of Wolverton with Norton Lindsey and Langley. It is this Parochial Church Council (PCC) that has the legal responsibility to maintain the Church and Churchyard.

GRANTS FROM NLPC TO THE PCC

To help ensure that the visual amenity of Norton Lindsey village is maintained to a high standard, Norton Lindsey Parish Council (NLPC) has for many years provided annual cash grants to the PCC to support ongoing 'maintenance activities' at the Church/Churchyard.

The grants have been targeted at specific activities, all of which have been determined by NLPC to be **of value to the whole Parish and none of which are religious in nature.**

Over the last five years these activities have fallen into three areas

- 1) Maintenance of the external Holy Trinity Clock
- 2) Groundskeeping of the Churchyard (original and extension)
- 3) Maintenance of the Church Room

NLPC has felt that the maintenance of the Clock (and chimes), maintaining the appearance of the Churchyard and helping to maintain the viability of the Church Room for use by the whole community have each met an annual test of value to the entire community.

FIVE YEAR FUNDING

Funding from NLPC to the PCC has been relatively consistent over the last five years and has been intended to help cover costs involved in:

- The maintenance of the Churchyard (such as purchasing petrol for lawn mowers, servicing and maintenance of equipment and building funds to replace equipment at the end of its life)
- Undertaking an annual service for the Holy Trinity Clock.

Rarely, NLPC has been asked to contribute funding for a 'one-off' expense - such as the case in 2018/9 where NLPC was asked to make an additional contribution for an 'overhaul' of the Holy Trinity Clock.

On average, over the last five years, the PCC has received annually in grant-aid from NLPC¹, a sum of £583 per annum (excluding one-off grants) / £684 per annum (including one-off grants).

£684

average annual grant over last five years

£3,418

total amount granted over last five years

	2015	2016	2017	2018	2019	2020
Church Clock Maintenance	£174	£174	£174	£698 ²	£198	TBD
Churchyard Maintenance	£300	£300	£300	£300	£300	TBD
Church Room Grant	£100	£100	£100	£100	£100	TBD
	£574	£574	£574	£1,098	£598	

It is important to note that during this period further capital maintenance has been carried out on the Church - such as a vestry roof replacement after damage caused by lead-thieves, but these have been funded **entirely** by the PCC.

¹ The full details of these grants have been published and are available on the website of NLPC.

² Includes a one-off grant of £500 towards cost of repairs to clock hammers, bells, and bracket work

HISTORIC LEGAL BASIS OF GRANTS

NLPC has the power to annually raise funds via a precept that makes up part of the local Council Tax payable by all 'householders' in the Parish.

As a parish council, NLPC is only able to spend money from this precept in very prescribed circumstances – each piece of expenditure must be made under the provisions of a specific Act of Parliament and only a limited number of provisions exist.

Historically it appears that NLPC has made the grants to the PCC under the following provisions (though this is not necessarily clear in each year which powers have been used) -

Statute	Description of Power	Grant
Local Government Act 1972 s137	'The Power to incur expenditure which ... is in the interests of, and will bring direct benefit to, their area or any part of it or all or some of its inhabitants'	Churchyard Maintenance Church Room grant
Parish Councils Act 1957 s2	'Provision of Public Clocks'	Clock Maintenance

The Local Government Act 1972 s137 enables Parish Councils to spend a limited amount of money on activities for which they have no other specific statutory authority. In 2020 / 21 this sum is calculated based on the sum of £8.32 per elector³, and there being 344 electors in the Parish as of 1 April 2020, this gives a total available sum of £2,862.08 .

³ See <https://www.nalc.gov.uk/news/entry/1343-nalc-notified-of-section-137-expenditure-limit-for-2020-21>

WHAT HAS CHANGED?



GRANT POLICY REVIEW

As part of a review of the NLPC grants procedure carried out in 2020, at the request of NLPC, the Clerk to NLPC requested advice from the Warwickshire Association of Local Councils (WALC), which is in turn affiliated with the National Association of Local Councils (NALC).

This question was not related to the question of the legality of the grants to the PCC, but rather on how to account for some expenditure in the NLPC annual accounts.

A detailed precis is included to the right of this page.

The summary of these conversations is an indication from WALC that it is not lawful for NLPC to be funding any PCC activities where ultimately the money is spent on maintenance of Church Property.

It is strongly implied here that all previous grants for maintenance activities could be considered to have been made *ultra vires* – i.e. acting beyond the legal power of NLPC.

Due to this email exchange, the Clerk brought this matter to the attention of NLPC and the Council at its meeting of the 11th of February 2020 the following was formally minuted;

“... HOWEVER, LEGAL ADVICE FROM THE NATIONAL ASSOCIATION OF LOCAL COUNCILS VIA WALC IS THAT IT IS NOT LAWFUL FOR PARISH COUNCILS TO CONTRIBUTE TO THE MAINTENANCE OF CHURCH PROPERTY. DISCUSSION TOOK PLACE REGARDING THIS LEGAL ADVICE AND THE FACT THAT MANY PARISH COUNCILS AROUND THE COUNTRY DO SUPPORT CHURCHES, BUT IT WAS AGREED THAT AS WALC ... HAD BEEN CLEAR THAT IT IS UNLAWFUL TO DO SO, NLPC MUST ABIDE BY THIS ADVICE. IN THE MEANTIME, NLPC WILL SEEK TO CAMPAIGN FOR A CHANGE IN THE LAW...”

After this meeting, a decision was made to form a working party to examine further the advice received from WALC and to examine if there are alternative legal mechanisms to potentially continue the funding of specific maintenance projects.

INITIAL QUERY

“... I WONDER IF YOU COULD CONFIRM IF GRANTS MADE UNDER DISCRETIONARY POWERS TO VILLAGE ORGANISATIONS FOR THE MAINTENANCE OF THE CHURCHYARD, DEFIBRILLATOR, CHURCH CLOCK, PLAY AREA, AND AN OPEN SPACE, ETC, SHOULD BE INCLUDED IN SECTION 137 EXPENDITURE. ...”

NLPC CLERK

INITIAL ADVICE FROM WALC

“... AS PARISH COUNCILS CANNOT CONTRIBUTE TO THE MAINTENANCE OF CHURCH PROPERTY THEY SHOULD NOT BE FUNDING GROUPS WHICH HAVE THE EXPRESS AIM TO MAINTAIN THE CHURCHYARD OR THE CHURCH CLOCK ...”

WALC

FURTHER CLARIFICATION

“... CAN I JUST CHECK IF YOU ARE SAYING THAT WE COULD SUPPORT GROUPS RESPONSIBLE FOR THE MAINTENANCE OF THE CHURCHYARD AND HELP TOWARDS THE COSTS OF THE CHURCH CLOCK UNDER SECTION 137 SO LONG AS ANY REQUEST FOR FUNDING GOES THROUGH THE SAME APPLICATION PROCESS AS OTHER COMMUNITY GROUPS SEEKING FUNDING. ...”

NLPC CLERK

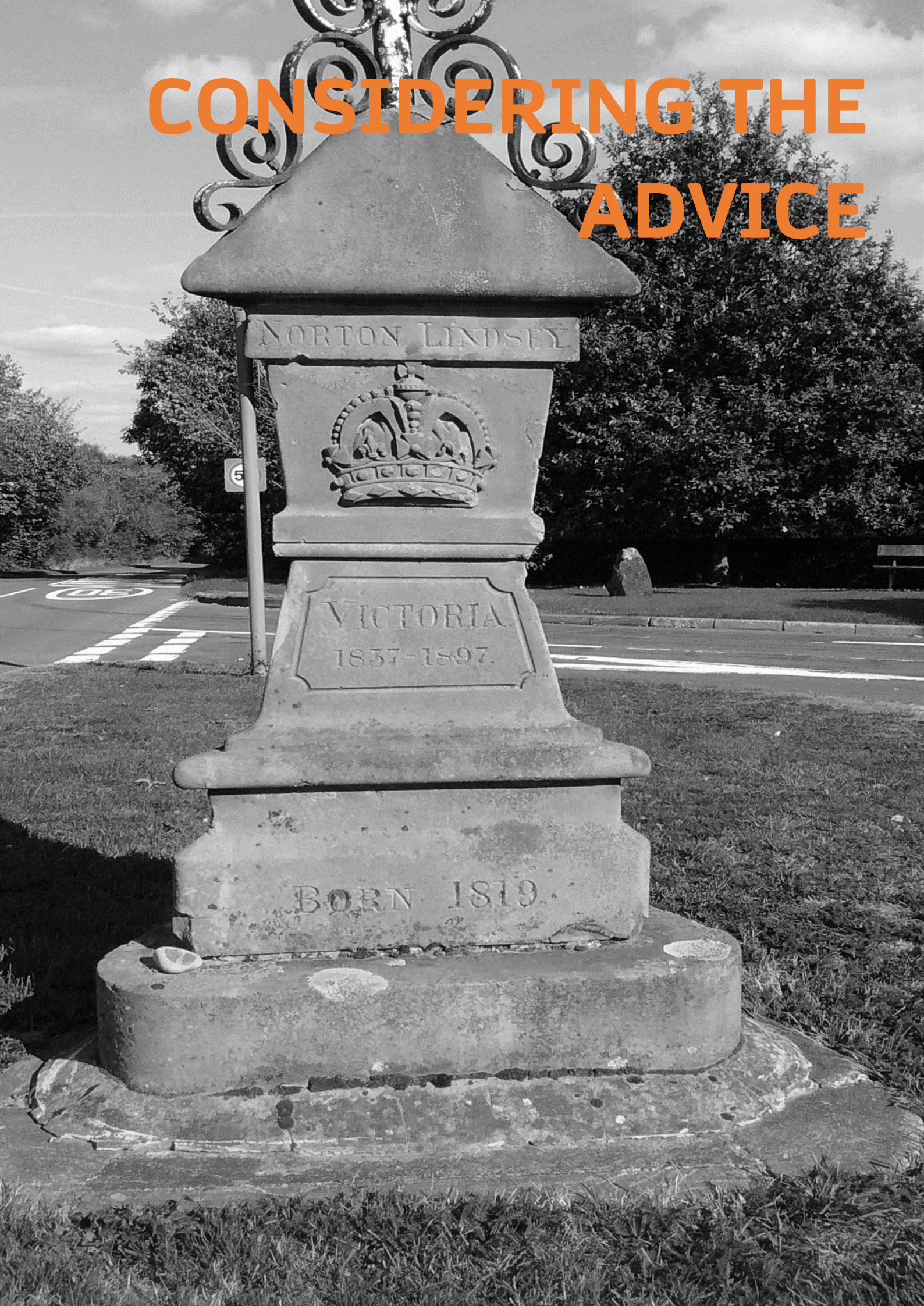
FINAL RESPONSE FROM WALC

“... THE LEGAL ADVICE FROM NALC IS THAT IT IS NOT LAWFUL FOR PARISH COUNCILS TO CONTRIBUTE TO THE MAINTENANCE OF CHURCH PROPERTY. THEREFORE THIS SHOULD NOT BE CONSIDERED AN ACCEPTABLE OBJECTIVE OF A COMMUNITY GROUP THAT IS LOOKING FOR GRANT SUPPORT FROM A PARISH COUNCIL.

IT IS DEEMED TO BE UNLAWFUL FOR PARISH COUNCILS TO FUND ANY WORK ON CHURCH PROPERTY ...”

WALC

CONSIDERING THE ADVICE



NALC's BRIEFING DOCUMENT

The "Legal Advice From NALC" referenced by WALC is contained in a NALC document entitled "L01-18 | FINANCIAL ASSISTANCE TO THE CHURCH" dated 31st January 2018⁴.

The paper outlines why the Local Government Act 1894 ("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 paper also explains 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. ..."

Ultimately the paper tries to answer whether subsequent legislation available to Parish Councils, such as the Local Government Act 1972 ("the 1972 Act") overrides the provision of the 1894 act or whether the prohibition is still in force.

NALC's view is that the specific provisions in the 1894 Act override most general powers granted to Parish Councils in subsequent legislation, including the 1972 Act and therefore it is still in force.

"...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"

As such, no Parish Council should make any grant available to any project that would maintain or

improve any property belonging to the Church of England.

The conclusion of the document is reproduced in full here, with emphasis added to the final paragraph.

"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."

These last few paragraphs of this guidance are important, as it does indicate that there is not actually a final legal determination on this matter.

Rather it suggests there is an exercise that needs to be carried out by Parish Councils that determines if any action is 'prudent'.

⁴ See <https://www.lalc.co.uk/wp-content/uploads/2012/07/L01-18-FINANCIAL-ASSISTANCE-TO-THE-CHURCH.pdf>

CHURCH OF ENGLAND'S VIEW

The Church of England take a different view to NALC⁵, but in summary believe that (emphasis added)

“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. **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 key point the C of E rely on is that a report created by the Government entitled the “2017 English Cathedral and Church Buildings Sustainability Review”⁶ stated that (emphasis added)

“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. “**

The summary of the C of E document is that (emphasis added)

“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.**”

The Church of England have taken legal advice considering the NALC guidance and this advice suggests that the NALC position is in fact incorrect.

Therefore, under the legal advice given to the Church of England it would appear to be legal for NLPC to continue to fund church maintenance activities of the type historically undertaken.

⁵ See

https://www.churchofengland.org/sites/default/files/2019-02/CCB_Local-Authority-Investment-in-Church-Buildings-Guidance.pdf

⁶ See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669752/Taylor_Review_Final.pdf

VIEW OF THE COVENTRY DIOCESE

During these investigations, the Diocese of Coventry was asked for its opinions (via the relevant Churchwardens and PCC) and the Diocesan Registrar & Legal Secretary to the Bishop of Coventry responded with the following communication.

“DEAR -----,

RE: NORTON LINDSEY CHURCHYARD

I HAVE RECEIVED A TELEPHONE ENQUIRY FROM ----- OF THE PARISH COUNCIL REGARDING THE LEGAL POSITION OF THE PARISH COUNCIL CONTRIBUTING TO THE MAINTENANCE OF THE CHURCHYARD AT NORTON LINDSEY.

I UNDERSTAND THAT THE PARISH COUNCIL HAVE PROVIDED SUCH FINANCIAL ASSISTANCE FOR MANY YEARS AND THAT THE CHURCHYARD AT NORTON LINDSEY IS THE ONLY BURIAL GROUND IN THE CIVIL PARISH.

I UNDERSTAND THAT RECENTLY IT HAS BEEN SUGGESTED TO THE PARISH COUNCIL THAT SUCH CONTRIBUTIONS ARE NOT AUTHORISED BY LAW.

I AM AWARE THAT THERE IS AN ON-GOING, “DISCUSSION” WHETHER SECTION 8 OF THE LOCAL GOVERNMENT ACT 1894 PREVAILS OVER SECTION 214(6) OF THE LOCAL GOVERNMENT ACT 1972.

SECTION 214(6) OF THE LOCAL GOVERNMENT ACT 1972 (THE 1972 ACT) PROVIDES THAT A BURIAL AUTHORITY MAY CONTRIBUTE TOWARDS ANY EXPENSES INCURRED BY ANY OTHER PERSON IN PROVIDING OR MAINTAINING A CEMETERY IN WHICH THE INHABITANTS OF THE AUTHORITY’S AREA MAY BE BURIED. UNDER THE AUTHORITY OF THAT SECTION, PARISH COUNCILS DO MAKE VALUABLE CONTRIBUTIONS TOWARDS THE MAINTENANCE OF CHURCHYARDS NOT CLOSED BY ORDER IN COUNCIL.

THE LOCAL GOVERNMENT ACT 1894 AT SECTION 6(1) AND SECTION 8 TRANSFERRED POWERS FROM THE ECCLESIASTICAL PARISH VESTRY TO THE NEWLY FORMED PARISH COUNCIL. POWERS AND DUTIES OF THE ECCLESIASTICAL PARISH VESTRY WERE THEREBY TRANSFERRED TO THE CIVIL PARISH EXCEPT FOR THOSE RELATING TO THE CHURCH OF ENGLAND PARISH CHURCH. IT WAS MADE CLEAR THAT THE PARISH COUNCIL, AS A CIVIL BODY, UNLIKE THE PARISH VESTRY AS AN ECCLESIASTICAL

BODY, HAD NO PARTICULAR CONNECTION WITH THE CHURCH OF ENGLAND AND NO PARTICULAR RESPONSIBILITY FOR THE PARISH CHURCH.

THERE IS ONE VIEW THAT THE PROHIBITION FROM THE 1894 ACT IS OVERRIDDEN BY THE SPECIFIC POWERS RELATING TO CHURCHYARDS AND CEMETERIES UNDER SECTIONS 214 AND 215 OF THE 1972 ACT. THIS APPARENT CONTRADICTION BETWEEN THE TWO PIECES OF LEGISLATION HAS NOT BEEN TESTED IN THE COURTS AND DIFFERENCES OF OPINION REGARDING THE TWO PIECES OF LEGISLATION HAVE BEEN EXPRESSED.

THE CHURCH OF ENGLAND IS OF THE OPINION THAT PARISH COUNCILS HAVE THE NECESSARY POWERS TO MAKE GRANTS UNDER THE POWERS IN SECTION 137(1) OR (3) OF THE 1972 ACT AND ITS FUNDING GUIDE SAYS THIS:

“SECTION 137 OF THE GOVERNMENT ACT 1972 PERMITS A LOCAL AUTHORITY (WHETHER AT COUNTY, DISTRICT OR PARISH COUNCIL LEVEL) TO CONTRIBUTE TOWARDS THE MAINTENANCE, REPAIR OF ADAPTATION OF CHURCHES 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. THERE IS AN UPPER LIMIT AND OTHER CONDITIONS ON THE AMOUNT THAT LOCAL AUTHORITIES CAN SPEND EACH YEAR IN THIS WAY BUT IT IS WORTH ENQUIRING. THE CHURCH IS OFTEN ONE OF THE CHIEF LOCAL CULTURAL ASSETS AND TOURIST ATTRACTIONS, AS WELL AS A LOCAL COMMUNITY FACILITY, AND SO YOU CAN CONFIDENTLY PRESENT YOUR PROJECT AS BEING IN THE INTERESTS OF THE COMMUNITY.

PARISH COUNCILS (WHICH ARE OFTEN RESPONSIBLE LEGALLY FOR CARRYING OUR MAINTENANCE TO CLOSED CHURCHYARDS) MAY BE PREPARED TO MAKE AN ANNUAL GRANT TOWARDS THE UPKEEP OF OPEN CHURCHYARDS AND, GIVEN SUFFICIENT PRIOR WARNING FOR BUDGETING PURPOSES, MAY BE ABLE TO DO THE SAME FOR MAINTENANCE OF THE CHURCH BUILDING ITSELF”.

IN 2017 A REVIEW (THE TAYLOR REVIEW) CONSIDERED THE SUSTAINABILITY OF ENGLISH CHURCHES AND CATHEDRALS.

THE REVIEW CONCLUDED THAT THE LAW SHOULD BE CLARIFIED, WHETHER THROUGH LEGISLATIVE CHANGE OR THE ISSUE OF GUIDANCE, TO ESTABLISH THAT LOCAL AUTHORITIES ARE NOT PROHIBITED FROM AWARDED FUNDING TO CHURCHES.

THE REVIEW STATES, “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”.

CURRENT GUIDANCE FROM THE NATIONAL ASSOCIATION OF LOCAL COUNCILS (NALC) ACCEPTS THAT IN THE ABSENCE OF CASE LAW AND SPECIFIC CLARIFICATION FROM GOVERNMENT THERE IS NO DEFINITIVE ANSWER TO THE QUESTION AS TO WHETHER OR NOT A COUNCIL CAN LEGITIMATELY MAINTAIN OR CONTRIBUTE TO THE MAINTENANCE OF AN OPEN CHURCHYARD. HOWEVER, THE NALC BRIEFING STATES THAT THE GOVERNMENT’S CURRENT VIEW IS THAT THERE IS NO NEED FOR ANY FURTHER LEGISLATION ON THE POINT BECAUSE IT BELIEVES THAT THE RESTRICTIONS IN THE 1894 ACT DO NOT OVERRIDE THE PROVISIONS IN THE LATER ACTS.

IN MY VIEW, IT IS CLEAR THAT THE LATER LEGISLATION HAS OVERRIDDEN EARLIER LEGISLATION WHICH HAS NOT BEEN SPECIFICALLY REPEALED.

ALSO, BY KEEPING A BURIAL GROUND OPEN BY CONTRIBUTING TO ITS MAINTENANCE IT MIGHT, IN A PARTICULAR CASE, BE LESS EXPENSIVE FOR THE MAINTAINING COUNCIL IF BY WITHDRAWING THAT SUPPORT, THE BURIAL GROUND IS CLOSED AND THEREAFTER THE COUNCIL WOULD HAVE TO TAKE ON THE ENTIRE MAINTENANCE LIABILITY UNDER SECTION 215 OF THE 1972 ACT.

IN A LEGAL OPINION GIVEN BY THE DEPUTY REGISTRAR OF THE FACULTY OFFICE, THE REGISTRAR OF CHICHESTER AND ST. ALBANS, THE SECRETARY OF THE CHURCHES LEGISLATION ADVISORY SERVICES, PROFESSOR MARK HILL QC AND THE THEN DEPUTY REGISTRAR OF THE DIOCESE OF OXFORD IN OCTOBER 2016, LOCAL AUTHORITIES MAY USE THEIR GENERAL POWERS UNDER THE LOCAL GOVERNMENT ACT 1972 (OR 2000 DEPENDING ON THE TYPE OF

AUTHORITY) TO CONTRIBUTE TO THE MAINTENANCE OF CHURCHYARDS IN THEIR AREA. THE LOCAL GOVERNMENT ACT 1972 UNDER SECTION 137, AS AMENDED, GIVES PARISH AND COMMUNITY COUNCILS A GENERAL POWER TO INCUR EXPENDITURE WHICH IN THEIR OPINION IS IN THE INTEREST OF, AND WILL BRING DIRECT BENEFIT TO, THE WHOLE OR PART OF THEIR AREA OR TO ALL OR SOME OF ITS INHABITANTS, UP TO CERTAIN FINANCIAL LIMITS.

THE LOCAL GOVERNMENT ACT 2000, SECTION 2, GIVES OTHER TYPES OF LOCAL AUTHORITIES POWER TO DO ANYTHING (INCLUDING INCURRING EXPENDITURE OR GIVING FINANCIAL ASSISTANCE) THAT THEY CONSIDER LIKELY TO ACHIEVE THE PROMOTION OR IMPROVEMENT OF THE ECONOMIC, SOCIAL OR ENVIRONMENTAL WELLBEING OF THEIR AREA AND THAT IS FOR THE BENEFIT OF THE WHOLE OR ANY PART THEREOF, OR OF ALL OR ANY PERSONS RESIDENT OR PRESENT THEREIN.

A BURIAL AUTHORITY MAY ALSO CONTRIBUTE TO EXPENSES INCURRED BY ANY OTHER BODY OR PERSON IN PROVIDING OR MAINTAINING A CEMETERY IN WHICH THE INHABITANTS OF THE AUTHORITY’S AREA MAY BE BURIED.

IN ADDITION, A LOCAL AUTHORITY MAY UNDERTAKE THE CARE, MANAGEMENT AND CONTROL OF ANY BURIAL GROUND, WHETHER OR NOT ANY INTEREST IN THE SOIL IS TRANSFERRED TO THE AUTHORITY.

IN CONCLUSION, I DO NOT CONSIDER THAT THERE IS ANY LEGAL IMPEDIMENT TO THE PARISH COUNCIL CONTINUING WITH ITS MAINTENANCE CONTRIBUTION UNDER SECTION 214(6) OF THE 1972 ACT. I AM CERTAIN THAT THE PCC AND THE DIOCESE ARE HIGHLY APPRECIATIVE OF THE PARISH COUNCIL’S ASSISTANCE IN MAINTAINING THE CHURCHYARD WHICH IS SUCH AN IMPORTANT LOCAL SPACE FOR THE INHABITANTS OF NORTON LINDSEY.

I HOPE THIS CLARIFICATION IS OF HELP.

YOURS SINCERELY,”

This letter states clearly that the view of the Diocese of Coventry is that it is lawful for donations to support ‘Churchyard Maintenance’ activities to be made.

Subsequent to the previous communication and after further representations by the PCC, the solicitors involved sent a further email stating:

“DEAR ----,

FURTHER TO OUR BRIEF DISCUSSION REGARDING THE CIVIL PARISH’S CONTRIBUTION TO THE MAINTENANCE OF THE CHURCHYARD, I WOULD EMPHASISE IN THE EVENT OF ANY CONCERN OF THE CIVIL PARISH, THAT IN MY VIEW NALC IS WRONG.

THE CHURCHYARD DOES NOT “RELATE TO THE AFFAIRS OF THE CHURCH”.

IT IS A BURIAL PLACE FOR ALL PARISHIONERS – ONE OF THE FUNDAMENTAL RIGHTS OF A PARISHIONER (WHETHER A MEMBER OF THE CHURCH OF ENGLAND OR NOT) IS TO BE BURIED IN THE CHURCHYARD AND CONSEQUENTLY A PARISH COUNCIL UNDOUBTEDLY HAS THE POWER TO CONTRIBUTE TO ITS MAINTENANCE.

I HOPE THIS IS OF HELP.

KIND REGARDS”

THE SOCIETY OF LOCAL COUNCIL CLERKS

The Society of Local Council Clerks were asked for advice on the matter via the Clerk of NLPC. Their response was;

- 1) "SLCC CONSIDERS DONATIONS TO CHURCHES FOR THE UPKEEP OF THE FABRIC OF THE BUILDING TO BE AGAINST THE LEGISLATION.
- 2) A CLERK MUST MAKE A JUDGEMENT WHAT NEEDS TO GO ON THE AGENDA AND SUPPLY ALL THE LEGAL ADVICE AVAILABLE FOR CLLRS TO MAKE ITS INFORMED DECISION.
- 3) HE DECISION OF THE COUNCIL (EITHER WAY) IS NEVER ANYTHING TO DO WITH THE CLERK OR A CLERK'S RESPONSIBILITY - IT IS A COUNCIL DECISION. IT WOULD BE COUNCIL WHICH HAS TO ANSWER FOR THE ULTRA-VIRUS DECISIONS IT MAKES.
- 4) THE COUNCILS DECISION IN THE MINUTES WOULD BE CLEAR AND BALANCED AND EXPLAIN EG THAT CLLRS WEIGHED UP ALL THE ADVICE AVAILABLE AND CAME TO THE CONCLUSION THAT THE ADVICE WAS NOT CLEAR ENOUGH TO PREVENT THE COUNCIL FROM ASSISTING THE CHURCH AND, DECIDED TO CONTINUE TO ASSIST THE CHURCH WITH THE *** PROJECT IE, ROOF FUND, NEW WINDOW, RESTORATION OF THE COMMUNITY'S CHURCH. "

It is not clear if "...The fabric of the building..." referred to in this response includes activities such as Churchyard Maintenance or instead prevents a Council providing money towards more substantial activities, such as a replacement roof etc. which is implied by the last paragraph.

HOUSE OF COMMONS BRIEFING PAPER

A 2019 briefing paper by the House of Commons library⁷ confirms the ongoing issue (emphasis added)

"... AN ISSUE AROSE IN THE LATE 2010S REGARDING THE LEGAL POWER OF PARISH COUNCILS TO FUND REPAIRS TO LOCAL CHURCHES. THIS IS IN THE LAW, WITH TWO STATUTORY PROVISIONS POINTING IN OPPOSITE DIRECTIONS. SECTION 8 OF THE LOCAL GOVERNMENT ACT 1894 PROVIDES THAT PARISH AND TOWN COUNCILS CANNOT GIVE FUNDING TO ECCLESIASTICAL CHARITIES. THERE IS A COMPETING PROVISION IN SECTION 137 (3) OF THE LOCAL GOVERNMENT ACT 1972 THAT ALLOWS PARISH AND TOWN COUNCILS TO GIVE FUNDING TO CHARITABLE BODIES. **AWARENESS THAT THE LAW IS UNCLEAR HAS DISCOURAGED MANY PARISH COUNCILS FROM PROVIDING FUNDING FOR CHURCHES, IN CASE THEY ATTRACT A LEGAL CHALLENGE. COUNCILS CONCERNED OVER THE LEGALITY OF PROPOSED DONATIONS SHOULD TAKE LEGAL ADVICE ...**"

It is important to recognise that the House of Commons library was simply identifying the issue for the help of MPs – it was not positing a definitive view – but it does yet indicate that there is no definitive legal ruling in this matter.

⁷ See

<http://researchbriefings.files.parliament.uk/documents/SN04827/SN04827.pdf>

BRANDON LEWIS LETTER

In a letter⁸ to an MP in 2014 an Under Secretary of State at the Department for Culture, Media & Sport stated that (emphasis added)

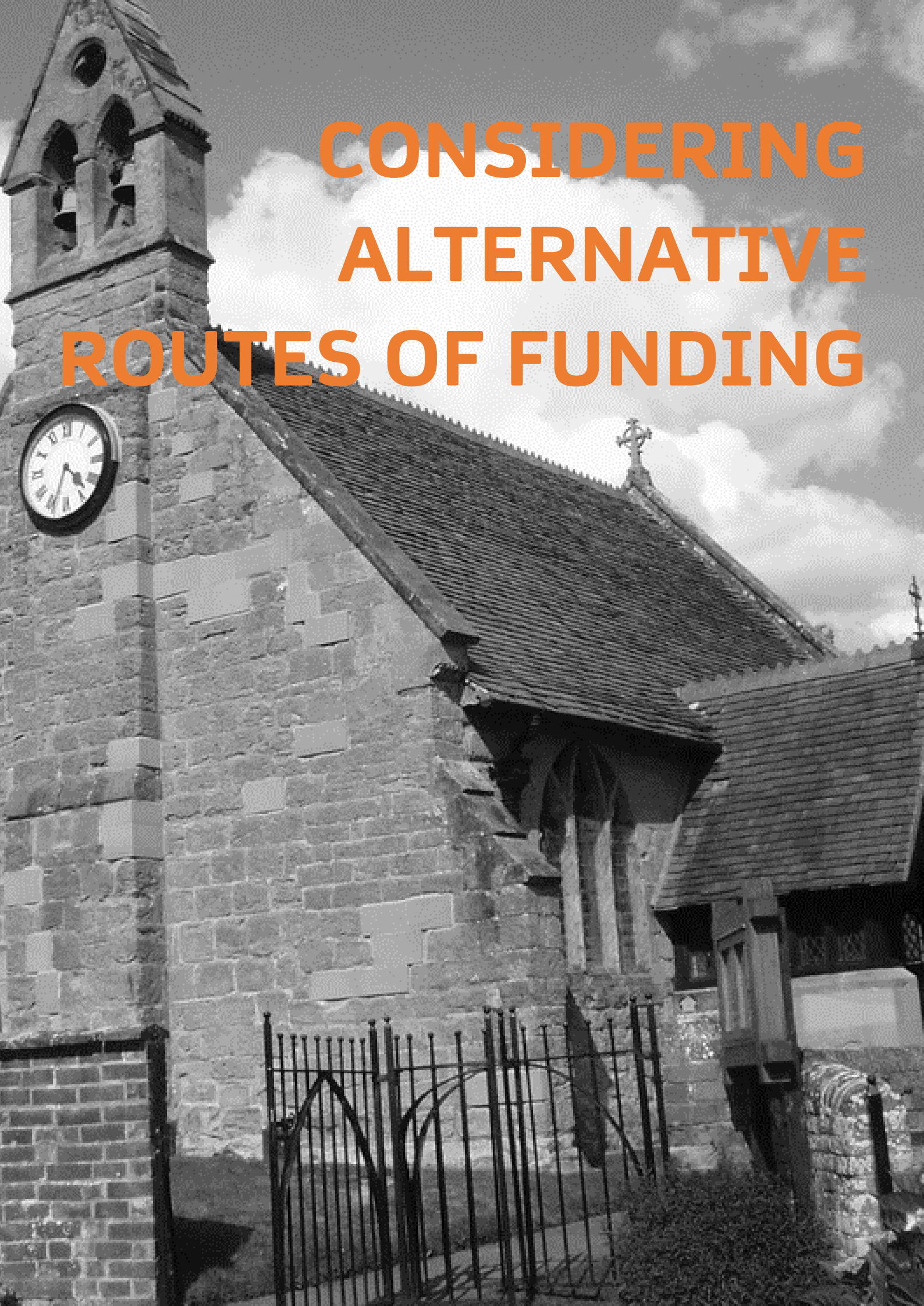
“... A PARISH COUNCILS POWERS TO CONTRIBUTE TOWARDS THE EXPENSES OF MAINTENANCE OR IMPROVEMENT OF PROPERTY, DOES NOT EXTEND TO CHURCH PREMISES. MR METCALF MAY BE INTERESTED TO KNOW THAT I BELIEVE THIS PROHIBITION EXTENDS TO PROPERTY HELD IN RELATION TO OTHER DENOMINATIONS AND FAITHS, IN CERTAIN CIRCUMSTANCES. HE MAY WISH TO READ SECTION 75 TO THE LOCAL GOVERNMENT ACT 1894 WHICH EXPANDS ON DEFINITIONS USED IN THE ACT.

THE GOVERNMENT BELIEVES THAT CHURCHES AND OTHER RELIGIOUS BUILDINGS CLEAR PIVOTAL ROLE IN THE COMMUNITIES AND ARE A UNIQUE PART OF ENGLAND’S HERITAGE. WE HAVE JUST RELEASED 20 MILLION POUNDS OF FUNDING TO SUPPORT THE REPAIR COSTS OF ROMAN CATHOLIC AND CHURCH OF ENGLAND CATHEDRALS AND HAVE ALSO PROVIDED FUNDING FOR PARISH CHURCHES THROUGH THE HERITAGE LOTTERY FUND. IT IS IMPORTANT THAT COMMUNITIES CAN PRESERVE THESE BUILDINGS FOR FUTURE USE, I WILL THEREFORE EXAMINE THE POSSIBILITIES AND PRACTICALITIES OF REMOVING THIS PIECE OF LEGISLATION. ...”

This letter appears to be the view of the UK government at the time but it does not appear to provide a definite answer to the legal question of whether the provisions of the 1894 Act have been superseded by later legislation.

⁸ See <http://www.hrballiance.org.uk/wp-content/uploads/2016/04/HRBA-letter-to-Mr-Bernard-Taylor-re-Parish-Councils-2016-06-23.pdf>

CONSIDERING ALTERNATIVE ROUTES OF FUNDING



ADDITIONAL FEATURES OF NOTE

Whilst the Church and its environs contain many important architectural and protected features, in the context of this discussion document the following are of particular note, as each of them *potentially* opens further avenues for NLPC to exercise one of its legal powers of expenditure.

CHURCH BUILDING

- External clock

CHURCHYARD

- Burial ground
- War memorial
- War grave
- Public footpath
- Verge bordering the highway

CHURCH ROOM

- Church room building and grounds

SUBSIDIARY POWERS

Taking in turn each of the additional features of note, there appears to be numerous powers that could be brought to bear.

Area	Possible Power
Clock	<p>NLPC has the power to ‘provide public clocks’ via Section 2 of the Parish Councils Act 1957.⁹</p> <p>“A PARISH COUNCIL MAY PROVIDE, MAINTAIN AND LIGHT SUCH PUBLIC CLOCKS WITHIN THE PARISH AS THEY CONSIDER NECESSARY, AND (SUBJECT TO THE PROVISIONS OF SECTION FIVE OF THIS ACT) MAY CAUSE THEM TO BE INSTALLED ON OR AGAINST ANY PREMISES OR IN ANY OTHER PLACE THE SITUATION OF WHICH MAY BE CONVENIENT.”</p>

⁹ See <https://www.legislation.gov.uk/ukpga/Eliz2/5-6/42>

Local Government Act 1972 s137 may also be available

War Memorial NLPC has the power to ‘maintain, repair, protect and adapt war memorials’ via the War memorials (Local Authorities’ Powers) Act 1923 s1 as amended by the Local Government Act 1948 s 133.

It also has the power to ‘maintain monuments and memorials’ under the Parish Councils & Burials Authorities (Misc. Provisions) Act 1970 s 1.

Local Government Act 1972 s137 may also be available

War Grave There appear to be no specific powers enumerated – however there is an indication that a war grave could be considered a ‘war memorial’

Public Footpath NLPC has the power to ‘Power to repair and maintain public footpaths and bridleways’ via the Highways Act 1980 ss 43 50.

Local Government Act 1972 s137 may also be available

Verge at the end of Church Road NLPC has the power to ‘to maintain roadside verges’ via the Highways Act 1980 s 96.

Local Government Act 1972 s137 may also be available

The apparent difficulty with the exercise of any of these powers is that if the NALC/WALC advice is accepted as correct, ALL of the powers become moot, as ultimately the ‘property’ that would be maintained is in the ownership of the Church of England and the 1894 Local Government Act would prevail.

CONSIDERING THE CHURCH CLOCK

Whilst it is believed that the clock was purchased and provided through a public subscription, it is most likely that the clock entered the 'ownership' of the PCC when it was affixed to the Church – certainly it appears the PCC have maintained the clock since its installation.

What is clear is that the Church Clock is not listed currently (or indeed seems to have ever been) on the Parish Council Asset Register and therefore it is not in the ownership and responsibility of NLPC, so whilst it may be 'public' it is not parish'

".. THE CHURCH CLOCK WAS INSTALLED IN 1887 AT A COST OF £41 TO COMMEMORATE QUEEN VICTORIA'S GOLDEN JUBILEE ..."

A HISTORY OF NORTON LINDSEY AND DISTRICT, K.F. CHAPMAN

Despite the fact the clock could well be considered 'public (through its purchase history and obvious public position), the NALC/WALC advice would still seem to be that no grant could be made at it is likely in the ownership of the PCC and, as ultimately the 'property' that would be maintained is in the ownership of the Church of England, the 1894 Local Government Act would prevail.

OTHER LOCAL COUNCILS



OTHER PARISH COUNCILS

Whilst no means an exhaustive analysis, the following local Parish Councils seem to have continued to make contributions 'similar in nature' to the grants made by Norton Lindsey Parish Council (note that these examples have been located through search engines and therefore may not be completely representative).

LEAMINGTON TOWN COUNCIL

Leamington Town Council in 2016 acted to provide "financial assistance for the renovation of the Church Clock at All Saint Parish Church"¹⁰.

"4.1 BY VIRTUE OF THE PARISH COUNCILS ACT 1957, (S.2) THE COUNCIL MAY MAINTAIN ANY PUBLIC CLOCK WHETHER PROVIDED BY IT OR SOME OTHER PERSON SUCH AS A PAROCHIAL CHURCH COUNCIL. THE COUNCIL HAS PREVIOUSLY EXTENDED GRANT ASSISTANCE TO ASSIST WITH THE MAINTENANCE OF CLOCKS AT ST MARY MAGDALENE CHURCH, LILLINGTON, AND SAINT JOHN THE BAPTIST CHURCH, TACHBROOK STREET

...

5.3 THE COUNCIL HAS ASSISTED SIMILAR SCHEMES OF WORK PREVIOUSLY USING POWERS AVAILABLE UNDER THE PARISH COUNCILS ACT, 1957 "

BISHOPS TACHBROOK PARISH COUNCIL

Bishops Tachbrook Parish Council appear to make regular contributions to the 'maintenance of the Churchyard' via St Chad's PCC - for example on the 20 of March 2020 for a sum of £550.00¹¹

HENLEY IN ARDEN PARISH COUNCIL

Henley in Arden Parish Council have listed in their Income and Expenditure report for 2018 / 2019, contributions of 'Church Clock' (£312.00) and section 137 funding to 'ensure the churchyard is kept tidy and maintained'¹²

HATTON PARISH COUNCIL

Hatton Parish Council in their 2018 annual report, indicated that they had contributed £550 to the 'Church', with a strong implication that this was for maintenance¹³.

WOLVERTON PARISH COUNCIL

The accounts of Wolverton Parish Council in November of 2020 indicate that funds for 'New Churchyard Fencing' of £250 has been 'ringfenced'.

¹⁰ See <http://leamingtonspatowncouncil.gov.uk/controls/DownloadDocument.ashx?docID=pj6712MEFXELMIHCH4951qGin&aID=2484> and <http://www.allsaintschurchleamington.org.uk/repairs.html>

¹¹ See <http://bishopstachbrook.com/content/files/12032020.2.docx>

¹² See <https://www.henley-in-arden-pc.gov.uk/wp-content/uploads/2019/12/REPORTS-ACCOUNTS-2019.pdf>

¹³ See

<https://docs.google.com/viewer?a=v&pid=sites&srcid=aGF0dG9ucGMuY29tfGhhdHRybi1wYXJpc2gtY291bmNpbHxneDo2YjE0YjNmODYzNzFhZjFl>

SOME OTHER EXAMPLES

https://www.herstmonceuxparish.org.uk/uploads/2019-2020-hpc-grant-awards.pdf	Restricted solely towards the upkeep of the church yard.	£500
https://uttoxeterruralparishcouncil.org.uk/wp-content/uploads/2017/04/URPC-Budget-2020-2021-RESOLVED-26.11.2019-1.pdf	Grass Strimming for Stramshall Church Yard	£528
http://www.ashvillages.org.uk/wp-content/uploads/2019/07/PC-Accounts-2018-2019-signed.pdf	Donations in 2018/19 to PCCs for church and churchyard maintenance.	£100 / £110
http://www.dartingtonparishcouncil.co.uk/wp-content/uploads/2020/11/Dartington-Parish-Council-Grants-awarded-to-community-groups.pdf	churchyard maintenance St Mary's	£1000
https://www.shackerstoneparishcouncil.org.uk/uploads/minutes-110315.pdf	Churchyard maintenance	£400
http://winkfieldparishcouncil.gov.uk/wp-content/uploads/2018/09/Grants-made-by-Winkfield-Parish-Council-to-voluntary.pdf	Churchyard Maintenance	£200
https://www.wetheralparishcouncil.org/parish-council-committees/finance-grants/minutes-3/2018-1/329-finance-grants-minutes-19-06-2018/file	Churchyard Maintenance	£1,000
http://www.codsallparishcouncil.co.uk/MAIN%20MINUTES%2019.04.10.pdf	Churchyard Maintenance	£6,000
https://e-voice.org.uk/wmortimerhazeleighpc/assets/documents/annual-parish-assembly-11-apri	Churchyard Maintenance	£200
http://www.nash-bucks-pc.gov.uk/_UserFiles/Files/April%20Minutes.%20doc.pdf 'NALC BRIEFING NOTE ON THE PROVISION OF FINANCIAL ASSISTANCE TO CHURCHES. THE PARISH COUNCIL NOTED THE CONTENTS OF THE BRIEFING NOTE. THE PARISH COUNCIL TOOK THE VIEW THAT THE CHURCHYARD IS A FACILITY THAT BENEFITS THE VILLAGE AND WHICH IS ALSO IN THE HEART OF THE VILLAGE. FURTHERMORE, THE PARISH COUNCIL IS UNDER AN OBLIGATION TO PROVIDE CHURCHYARD FACILITIES. IT WAS THEREFORE IMPORTANT TO ENSURE THAT THE CHURCHYARD IS WELL MAINTAINED. FOR THESE REASONS THE PARISH COUNCIL SAW NO REASON TO CHANGE ITS POLICY ON DONATIONS FOR CHURCHYARD MAINTENANCE. IT WAS ALSO NOTED THAT THE PAROCHIAL CHURCH COUNCIL ACCOUNTS FOR CHURCHYARD EXPENDITURE SEPARATELY SO THAT THERE IS A CLEAR AUDIT TRAIL TO SHOW THAT ANY CONTRIBUTIONS BY THE PARISH COUNCIL ARE USED FOR CHURCHYARD MAINTENANCE. SIR B. STANER SAID WHADDON PC LIKewise DONATE FOR CHURCHYARD MAINTENANCE OF WHADDON CHURCH ON THE BASIS THAT IT IS A VILLAGE FACILITY.'	Churchyard Maintenance	
http://burtonagnesparishcouncil.eastriding.gov.uk/Data/Sites/54/media/minutes-april-29-2019-.pdf	Churchyard Maintenance	£200
http://www.trotton-with-chithurst.org.uk/uploads/agenda20201111pc.pdf	Churchyard Maintenance	~£350

Note, this table has been populated based on the information contained in the relevant documents – no further research has been done as to the exact circumstances in each scenario. There are also undoubtedly Parish Councils that have indicated that payments cannot be made based on the advice they have received.

A black and white photograph of a cemetery. In the foreground, a large stone cross stands on a rectangular base. The base has an inscription. To the left of the cross is a small planter box with flowers. In the background, a large evergreen tree dominates the scene. Other gravestones are visible in the distance. The sky is overcast.

OPTIONS FOR CONSIDERATION

TO
THE GLORY OF GOD
AND IN MEMORY OF
FRANK HARRIS
WHO GAVE HIS LIFE IN THE
WORLD WAR 1939-1945

OPTION 1

Option 1 is that NLPC accepts the advice from bodies such as WALC/NALC and in line with its currently 'minuted' position no longer accepts any grant applications from the PCC (or any other religious organisation) for activities that would ultimately maintain 'church' property.

OPTION 2

Option 2 is that based on the subsequent investigations and research contained in this document, NLPC determines that there is in fact not a definitive legal determination in this matter and therefore it can continue (in line with similar decisions made by other Parish Councils) to accept grant applications by the PCC *unless/until there is a clarification of the law*.

NLPC would need to pass a resolution such as the below (the exact text would be determined by any Councillor(s) putting forward a motion).

"AFTER FURTHER INVESTIGATION IT HAS BECOME CLEAR THAT THE ADVICE PROVIDED BY WALC/NALC IS NOT A CLEAR FINAL DETERMINATION OF THE LEGAL POSITION CONCERNING THE PROVISION OF GRANTS FOR MAINTENANCE OF PROPERTY THAT WHILST ULTIMATELY OWNED BY THE CHURCH OF ENGLAND, IS OF SIGNIFICANT AMENITY TO ALL RESIDENTS OF THE PARISH.

IT IS CLEAR FOR EXAMPLE THAT THE CHURCH OF ENGLAND HAS BEEN GIVEN A DIFFERENT LEGAL VIEW.

NLPC HAVE CARRIED OUT FURTHER ANALYSIS OF THE ADVICE AND HAVE LOOKED TO SEE WHAT OTHER PARISH COUNCILS HAVE DONE IN SIMILAR SITUATIONS.

AFTER REVIEWING THIS ANALYSIS NLPC RESOLVE THAT

- a) THERE IS NO CLEAR DEFINITIVE LEGAL POSITION REGARDING THE POWERS OF NLPC TO FUND CHURCH MAINTENANCE ACTIVITIES. GIVEN THE SIGNIFICANT AMENITY AND VALUE TO THE PARISH, NLPC BELIEVE THAT A CONTINUATION OF HISTORIC PRACTICE WOULD BE ACCEPTABLE UNTIL SUCH POINT A DETERMINATION IS MADE. THEREFORE
- b) NLPC WILL ACCEPT APPLICATIONS FROM THE PAROCHIAL CHURCH COUNCIL FOR ACTIVITIES RELATED TO THE ONGOING MAINTENANCE OF HOLY TRINITY CHURCH CLOCK, THE CHURCHYARD OF HOLY TRINITY, THE MAINTENANCE OF THE HOLY TRINITY CHURCH ROOM
- c) NO APPLICATION BY THE PCC (OR ANY OTHER ORGANISATION) FOR AN ACTIVITY THAT COULD BE SEEN AS 'RELIGIOUS IN NATURE' WILL BE IN ORDER
- d) ALL APPLICATIONS FROM THE PCC WILL BE REVIEWED AND VOTED UPON IN LINE WITH THE STATED GRANTS POLICY OF NLPC
 - a. AN APPLICATION DOES NOT INDICATE THAT A GRANT WILL BE MADE
 - b. IF A GRANT IS MADE BY NLPC TO THE PCC, THE PCC WILL RESOLVE TO CONFIRM IN WRITING AT THE CONCLUSION OF THE YEAR FOR WHICH THE GRANT PERTAINS, THAT ALL MONIES HAVE BEEN SPENT SPECIFICALLY AND WHOLLY ON THE PROJECT FOR WHICH IT WAS PROVIDED AND WILL RETURN ANY MONIES TO NLPC NOT SO EXPENDED.

- e) IF GRANTS ARE MADE, THEN WHEREVER POSSIBLE THEY WILL BE PROVIDED USING SPECIFIC LEGISLATIVE POWERS RATHER THAN THE CATCH-ALL PROVISIONS OF THE LOCAL GOVERNMENT ACT 1972 s137
- f) THE CLERK OF NLPC IS ASKED TO FORMALLY REVIEW ANNUALLY (BY THE NORMAL MEETING PREVIOUS TO THE OPENING OF EACH 'ROUND' OF GRANTS) IF A FINAL LEGAL DETERMINATION HAS BEEN MADE CONCERNING THE LOCAL GOVERNMENT ACT 1894 PROVISIONS AND/OR IF ANY OTHER RELEVANT CHANGE IN THE ADVICE OF NALC/WALC/CHURCH OF ENGLAND HAS BEEN MADE
 - a. NLPC WILL RESOLVE AFTER THE PRESENTATION OF THE ADVICE WHETHER IT WISHES TO CONTINUE TO ALLOW THE PCC TO APPLY FOR FUNDING IN THE FOLLOWING YEARS GRANT ROUND(S).
- g) THE CLERK OF THE PARISH COUNCIL SHOULD BE GIVEN AN OPPORTUNITY TO FORMALLY RECORD IN THE COUNCIL MINUTES ANY ADVICE THAT THEY SHALL GIVE TO THE MEMBERS OF NLPC PRIOR TO A VOTE BEING UNDERTAKEN"

JUDICIAL REVIEW -COULD THIS OPTION BE CHALLENGED?

If Option 2 were adopted, it does appear that NLPC *could* be subject to Judicial Review by an interested party to determine if NLPC has acted ultra vires.

Given the sums involved in bringing such an undertaking, the number of years this has occurred, the fact that other Parish Councils (including substantially larger ones), and the relatively low amounts of money involved, it could be considered that this highly unlikely – but it could theoretically happen.

It is important to recognise that NLPC would be no more subject to review than any other Parish Council that is currently funding similar activities.

"PUBLIC BODIES ARE GENERALLY ONLY FREE TO DO WHAT THE LAW SAYS THEY CAN DO. WITH SOME EXCEPTIONS, THE LAW IS SET OUT IN ACTS OF PARLIAMENT AND IN SECONDARY LEGISLATION (TYPICALLY THINGS LIKE REGULATIONS, RULES AND ORDERS) MADE BY GOVERNMENT MINISTERS. SO, WITH SOME EXCEPTIONS, EVERY DECISION A PUBLIC BODY TAKES MUST BE AUTHORISED BY A PIECE OF LEGISLATION, WHICH WILL DEFINE ANY LIMITS ON THE PUBLIC BODY'S POWERS. PUBLIC BODIES MUST CORRECTLY UNDERSTAND AND APPLY THE LAW THAT REGULATES AND LIMITS THEIR DECISION-MAKING POWERS. IF THEY DO NOT FOLLOW THE LAW CORRECTLY ANY RESULTING DECISION, ACT, OR FAILURE TO ACT WILL BE UNLAWFUL" ¹⁴

- At a minimum NLPC would be liable for the costs of the applicant if they were found on Judicial Review to have acted Ultra Vires. The costs involved could be substantial for the Council, though it does *appear* that the costs could be capped if it were agreed by a court that the matter was of national importance

"IN GENERAL, THE LOSER OF A JUDICIAL REVIEW CASE IS ORDERED TO PAY THE WINNER'S COSTS OF BRINGING THE CASE. THAT MEANS THAT BEFORE YOU BRING A CLAIM FOR JUDICIAL REVIEW, YOU MUST BUDGET FOR 2 SEPARATE ITEMS OF EXPENDITURE: 1. YOUR OWN LAWYERS' FEES AND EXPENSES (WHICH HAVE TO BE PAID IN ANY EVENT); AND 2. THE OTHER SIDE'S LEGAL FEES AND EXPENSES (WHICH YOU ARE LIKELY TO HAVE TO PAY IF YOU LOSE THE CASE). YOU MAY BE ABLE TO AGREE A FIXED FEE WITH YOUR OWN LAWYER, BUT YOU WILL HAVE NO WAY OF QUANTIFYING YOUR OPPONENT'S COSTS IN ADVANCE. THOSE WILL USUALLY BE THE COSTS OF THEIR SOLICITOR AND BARRISTER, AND ANY EXPERT OR COURT FEES. THE TOTAL COULD AMOUNT TO £30,000

¹⁴ See P2 - An Introduction To Judicial Review - <https://publiclawproject.org.uk/wp-content/uploads/2019/02/Intro-to-JR-Guide-1.pdf>

OR MORE, ALTHOUGH THIS IS A VERY ROUGH GENERAL ESTIMATE – THE TRUE FIGURE COULD BE MUCH MORE OR LESS.”¹⁵

AUDITING PROCESS

As part of the Annual Governance Statement of NLPC, the Chairman and Clerk must confirm that

“WE TOOK ALL REASONABLE STEPS TO ASSURE OURSELVES THAT THERE ARE NO MATTERS OF ACTUAL OR POTENTIAL NONCOMPLIANCE WITH LAWS, REGULATIONS AND PROPER PRACTICES THAT COULD HAVE A SIGNIFICANT FINANCIAL EFFECT ON THE ABILITY OF THIS SMALLER AUTHORITY TO CONDUCT ITS BUSINESS OR ON ITS FINANCES.”¹⁶

If option two were adopted by NLPC, then it would be necessary for the Chairman and Clerk to satisfy themselves that all ‘reasonable steps’ had been taken. It is also possible that any external auditor appointed by NLPC *could* determine that the expenditure was inappropriate.

It must be noted that during previous years when contributions have been made to ‘Churchyard Maintenance’ the Chairman, Clerk and external auditor have each independently indicated that the donations were lawful based on their understanding of the law at the time.

¹⁵ See P13 - An Introduction To Judicial Review - <https://publiclawproject.org.uk/wp-content/uploads/2019/02/Intro-to-JR-Guide-1.pdf>

¹⁶ See P11 - <https://www.nalc.gov.uk/library/publications/2897-the-practitioners-guide/file>

