

Report

Subject : Formation of a new parish council for Salisbury

Report to : The Cabinet

Date : Wednesday 05 September 2007

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Leader of the Council : Councillor Paul Sample

1. Summary

To seek Members views on a parish council for Salisbury and to consider what recommendations if any to make to Council

2. Formation of a parish council under the existing law

2.1. There are 3 ways of creating a parish council under the Local Government and Rating Act 1997:

- A review by the Council
- Submission of a petition via the Council to the Secretary of State
- Further to a review by the Local Government Commission as directed by the Secretary of State

The functions are not executive arrangements under the Local Government Act 2000 and are therefore the responsibility of the Council.

2.2. Council review

2.2.1. The Council may carry out a review of the whole or any part of its area.

2.2.2. The Council is required to have regard to the need to reflect the identities and interests of local communities and to secure effective convenient local government.

2.2.3. Shrewsbury and Atcham Borough Council are currently seeking the views of residents on a proposal for the establishment of a town council for Shrewsbury following the success of Shropshire County Council's bid for unitary status.

2.3. Petition

2.3.1. The petition must be signed by not less than 250 or 10% of those people shown on the local register of electors as resident within the area of the proposed parish whichever is the greater

2.3.2. The petition must define the area of the proposed parish by way of a map or a written description by reference to identifiable fixed boundaries e.g. ward boundaries.

2.3.3. The Council has up to 3 months to consider a petition consult with interested parties and submit a response to the Secretary of State.



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- 2.4. Directed review
In light of the provisions in place for District reviews and petitions such reviews are rare and are not considered in this report.
- 2.5. Process for a Council review/submission of a petition
- 2.5.1. The Council may make recommendations to the Secretary of State as to the proposed parish and to the Electoral Commission as to the proposed electoral arrangements for a parish council.
- 2.5.2. In considering what recommendations to make with regard to the proposed parish the Council must first itself assess the support and local need for a parish council. There are no prescribed ways of doing this e.g. a local poll or postal vote could be used. The Charter Trustees and Wiltshire County Council would be mandatory consultees.
- 2.5.3. In considering what recommendations to make with regard to proposed electoral arrangements the Council would need to consider the number of Councillors, whether the proposed parish should be divided into wards and if so their number and boundaries.
- 2.5.4. The Secretary of State may by order give effect to the recommendations of the Council and the Electoral Commission. In deciding whether to accept or reject any recommendations the Secretary of State will be guided by the general rule that the parish be based on the smallest area which reflects community identity and interest and which is viable as an administrative unit. Whilst the larger the urban area the greater the scope for identification of distinct communities within it a Charter Trustee City may be seen as a cohesive area provided it was not unduly dominant. A parish of more than 50% of the district by population is unlikely to be accepted.
- 2.5.5. There is no time limit on how long it will take before the Secretary of State makes a decision. Any new parish council is formally constituted by a sealed order of the Council.
- 2.5.6. Flowcharts are attached as Appendix 1. Based on the experience of others the whole process would take not less than 18 months and would cost the Council upto £15,000.
- 2.5.7. In the event that any process was not completed by the time any new Wiltshire authority is in place there seems no reason in principle why such authority should not be able to continue the process [with such changes as required by law] if it wished to do so.
- 2.6. Formation
- 2.6.1. The effective date is 1st April.
- 2.6.2. A specific election for new parish councillors would be held. The cost would fall on the Council. A parish council must not have less than 5 councillors but there is no maximum number.
- 2.6.3. A shadow council can be elected by the electorate using a secret ballot or a temporary council can be appointed by the Council pending formation.
- 2.7. Financial matters
- 2.7.1. The residents of a parish meet the costs of a parish council by paying an addition to their Council tax called a precept. The amount depends on the costs and level of services provided.
- 2.7.2. The Council can anticipate the precept of a new parish council or the Council could provide a grant to finance its first year. Individual parish precepts are not subject to capping.
- 2.7.3. As well as levying a precept the new parish council would be able to levy "special expenses" in the same way that City Area [Community] Committee does provided service delivery is local to and spending by the principal council [the Council and then the new Wiltshire authority] and another parish or parishes occurs in different areas.
- 2.8. Transfers of assets etc
- 2.8.1. As no authority would be abolished the only assets that would automatically transfer from the Council to a new parish council are allotments within the boundary of the new parish.
- 2.8.2. The Council would be able to use its well being powers under the Local Government Act 2000 to dispose of land to a new parish if it considers that disposal would be likely to promote or improve the economic social or environmental well-being of the district or any part of it.
Any disposal would have to be for the best consideration that can reasonably be obtained unless the Secretary of State's consent was obtained. However under the General Disposal Consent [England] 2003 the Council can dispose of land held under the Local Government Act 1972 at

an undervalue which does not exceed £2 million. Subject to certain limited exceptions any land not currently held under the 1972 Act would first need to be appropriated before any disposal. State Aid rules would need to be complied with.

The position has been complicated by the Local Government and Public Involvement in Health Bill. Should the Bill become law in its current form it is open to the Secretary of State to issue a direction that the Council may not dispose of land worth more than £100,000 in aggregate backdated to 01.01.2007 without the consent of a designated person.

2.8.3 Delivery of the Salisbury Vision will require that assets in public ownership are made available for redevelopment and regeneration activities. Agreement would need to be reached between the Council Wiltshire County Council and any new parish council on how best to do this.

2.9. Duties Powers and Rights

2.9.1. Duties include:

- Elections
- Budget setting and maintenance of accounts
- Governance arrangements such as standing orders

There is no duty to provide services.

2.9.2. Rights include:

- Service delivery as an agent for principal authorities
- Notification of and consultation on planning matters within the parish

2.9.3. A list of the powers of a parish council is attached as Appendix 2. In addition there is a power to spend a limited amount of money as set by the Secretary of State on anything a parish council deems to be of benefit to the parish.

3. Formation of a parish council under the Local Government and Public Involvement in Health Bill

3.1. There are 2 ways of creating a parish council:

- A review by the Council or by Wiltshire County Council pending the transfer of functions date [April 2009 unless Wiltshire County Council's bid for August 2008 is successful] thereafter a review by the new Wiltshire authority
- Submission of a petition to the Council or to Wiltshire County Council pending the transfer of functions date thereafter to the new Wiltshire authority

3.2. The process is similar to that under the existing law. The main differences are that:

- The Council or Wiltshire County Council or the new Wiltshire authority as the case may be makes the decision not the Secretary of State
- a decision must be made within 12 months of the date that the authority concerned decides to carry out a review or of the date a petition is received
- asset transfer may be agreed and in the absence of agreement determined by arbitration

4. Wiltshire County Council's unitary bid

4.1. Section 3 of the "We're Ready" submission states that a Council for Wiltshire might wish to commission a special study of possible changes in governance. A parish or other models might be considered.

4.2. Wiltshire County Council expands on its statement in its supplement to the Submission. This states that Salisbury is the only unparished area in Wiltshire and that an independent commission will carry out a study to recommend governance arrangements which respect the heritage of Salisbury and strengthen the community voice. Establishment of such a commission is envisaged by November 2007. It would consider whether Salisbury should be parished, and if so, make recommendations as to the number of parishes, the number of Councillors per parish, on boundaries and as to electoral arrangements.

5. Charter trustees:

On 22.08.07 the Department for Communities and Local Government issued a consultation paper "Councils' proposals for Unitary Local Government: An approach to Implementation. The paper states that if an area for which charter trustees have been constituted becomes a parish secondary legislation can provide that the area ceases to qualify for charter trustee status, any mayor shall cease to hold office and the ceremonial property and the liabilities held by the charter trustees would transfer to the parish.

6. Options:

- Do nothing
This option would not meet the Council's priority of giving people opportunities to influence their community and neighbourhood
- Creation of a Council led parish council
It is uncertain whether this option would be delivered by the Council should the new Wiltshire authority be created in August 2008 but should be deliverable by April 2009 subject to any transitional arrangements put into effect in April 2008
- Creation of a new Wiltshire authority led parish council
There is no guarantee that the proposed commission would recommend that Salisbury be parished.

7. Indicative timetable for Council review:

- Full Council decision to carry out a review: 24.09.07
 - City Area [Community] Committee agrees project initiation arrangements: 02.10.07
 - Publication of review: October 2007
 - City Area [Community] Committee considers representations, makes any recommendations and publicises them: December 2007
 - City Area [Community] Committee considers representations, makes any recommendations and publicises them: February 2008
 - Recommendations sent to Secretary of State: March 2008
 - Consideration of recommendations by Local Government Commission: April-June 2008
 - Secretary of State accepts recommendations taking account of Local Government Commission proposals: September 2008
 - Secretary of State consults on draft order for a new parish area: October 2008
 - Secretary of State makes an order taking into account any representations: January 2009
 - Council makes an order establishing the parish council: February 2009
- NB This timetable represents the minimum period. The timetable is likely to be longer.**

8. Consultation undertaken:

- "Prescribed" internal consultees
- Wiltshire County Council Officers

9. Recommendations:

Members determine whether Cabinet wishes to make any recommendations to Council:

9.1 as to the carrying out of a review

9.2 in the event of a Council decision to carry out a review

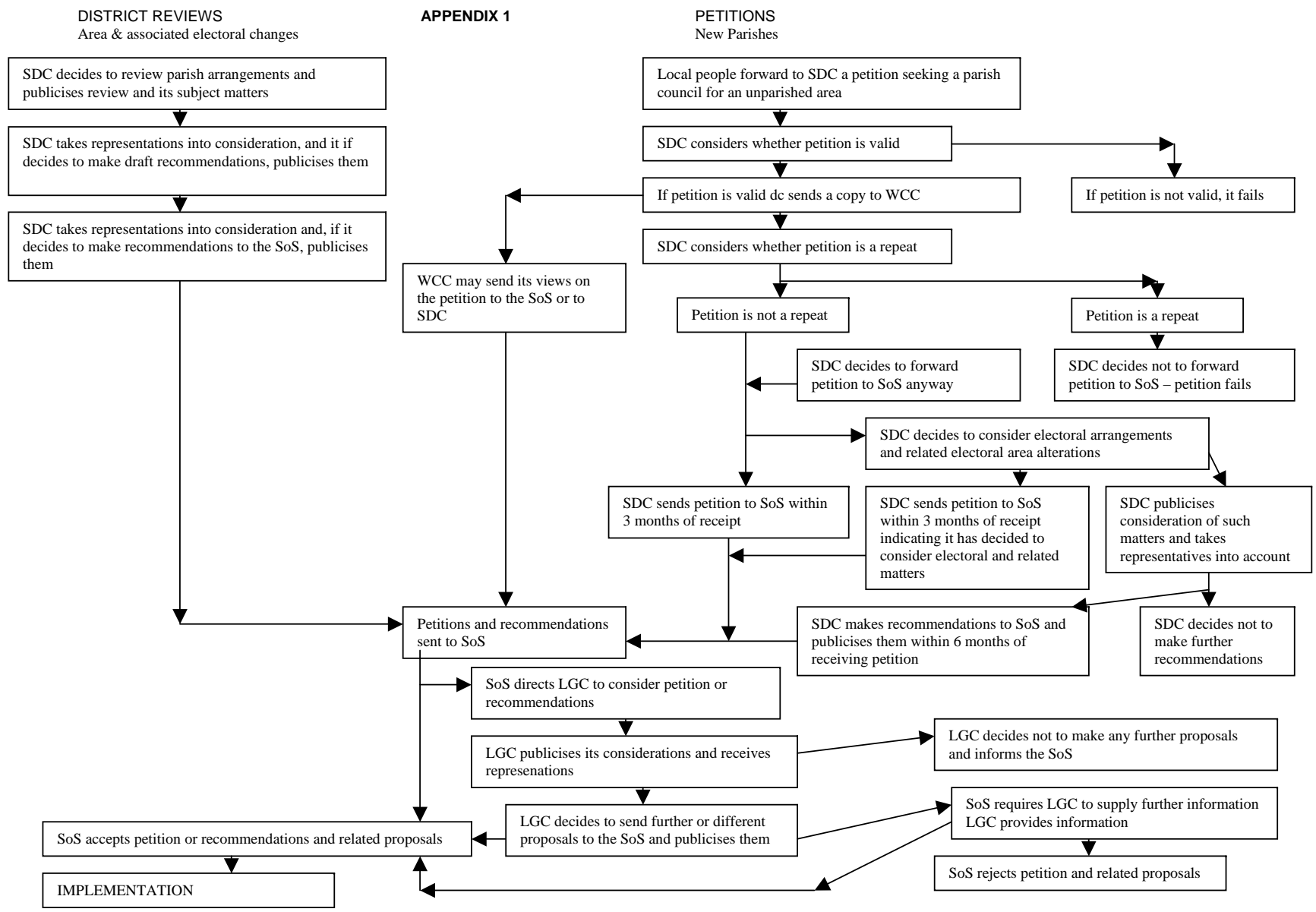
- the delegation of the carrying out of the review to City Area [Community] Committee
- the establishment of a steering group to oversee implementation of the review

10. Background papers:

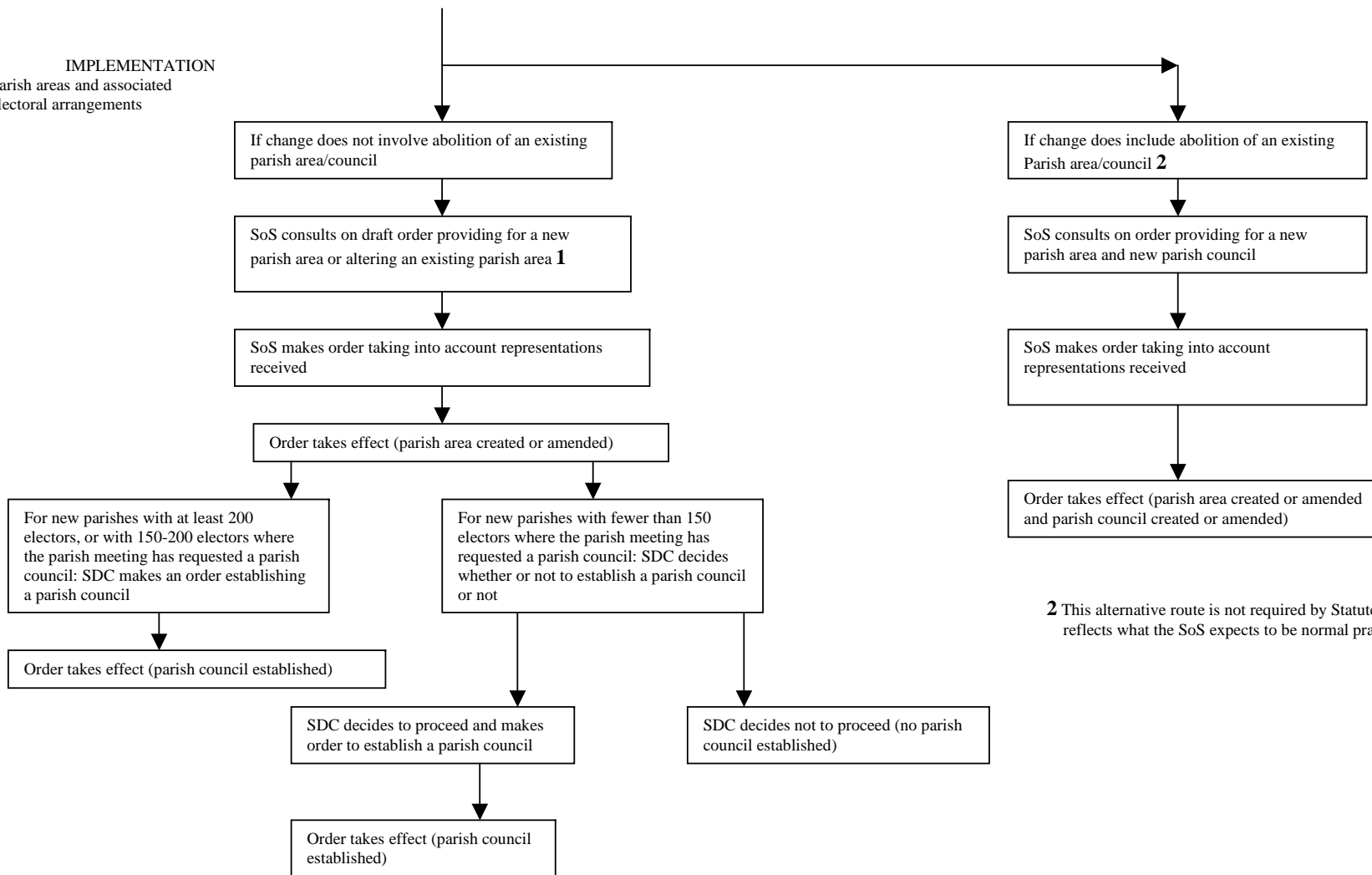
None- all published papers

11. Implications:

- Key decision: no
- Financial: the existing budget of the City Area forms part of the Council's overall budget albeit the district raises a special expenses levy on City dwellings to pay for the maintenance of certain district owned assets. Any application for parish status will require resourcing.
- Legal: set out in report
- Human rights: none
- Personnel: resources would need to be allocated to the process of forming a parish council in the form of a project team
- ICT: none
- Community safety: none
- Environmental: none
- Council's Core Values: communicate
- Wards affected: Salisbury City wards



IMPLEMENTATION
Parish areas and associated electoral arrangements



1 SoS may in his order direct SDC to make specific provision for a parish council, which SDC must follow

Powers and Duties of Local Councils

The following table sets out the main ones; it is not a complete list of every single power and duty.

Where a function is marked with an asterisk (*), a council also has the power to give financial assistance to another person or body performing the same function.

LGA 1972- Local Government Act 1972

Function	Powers and Duties	Statutory Provision
Accounts	Duty to appoint a Responsible Financial Officer to manage the council's accounts	LGA 1972, s.151
Acceptance of office	Duty to sign declaration of acceptance of office (councillors and chairman)	LGA 1972, s.83
Agency arrangements	Power to arrange for the discharge of functions by another local authority	LGA 1972, s.101
Allotments	Power to provide allotments duty to provide allotment gardens if demand exists	Smallholdings & Allotments Act 1908, ss.23, 26 & 42
Baths and washhouses	Power to provide public baths and washhouses	Public Health Act 1936, ss. 221-223, 227
Borrowing	Power to borrow money for statutory functions	LGA 1972, Sch 13
Burial grounds, cemeteries and crematoria*	Power to acquire and maintain	Open Spaces Act 1906, ss.9 & 10
	Power to provide	LGA 1972, S.214
	Power to agree to maintain memorials and monuments	Parish Councils and Burial Authorities (Misc. Prov.) Act 1970, s1
	Power to contribute to expenses of maintaining cemeteries	LGA 1972, s.214 (6)
Bus shelters*	Power to provide and maintain bus shelters	Local Government (Misc. Prov.) Act 1953, s.4
Byelaws	Power to make byelaws for public walks and pleasure grounds	Public Health Act 1875, s.164
	Cycle parks	Road Traffic Regulation Act 1984, s.57(7)
	Baths and Washhouses	Public Health Act, 1936 s.233
	Open spaces and burial grounds	Open Spaces Act, 1906, s.15

Charities	Power to appoint trustees of parochial charities	Charities Act 1993, s.79
Christmas lights	Power to provide to attract visitors	LGA 1972 s.144
Citizens Advice Bureau	Power to support	LGA 1972 s.142
Clocks*	Power to provide public clocks	Parish Councils Act 1957 s.2
Closed churchyards	Power (and sometimes duty) to maintain	LGA 1972 s.215
Commons and common pastures	Powers in relation to enclosure, regulation and management, and providing common pasture	Inclosure Act 1845; Local Government Act 1894, s.8(4); Smallholdings & Allotments Act 1908, s.34
Community centres	Power to provide and equip community buildings	LGA 172 s.133
	Power to provide buildings for use of clubs having athletic, social or educational objectives	Local Government (Misc. Prov.) Act 1976, s.19
Conference facilities*	Power to provide and encourage the use conference facilities	LGA 1997, S.144
Consultation	Right to be consulted by principal councils if directed by Secretary of State (England) or by Welsh Assembly (Wales)	Local Government and Rating Act 1997, s.21 LGA 1972, s.33A
Crime prevention*	Power to spend money on various crime prevention measures	Local Government and Rating Act 1997, s.31
Drainage	Power to deal with ditches and ponds	Public Health Act 1936, s.260
Entertainment and the Arts*	Provision of entertainment and support for the arts including festivals and celebrations	LGA 1972, s.145
Flagpoles	Power to erect flagpoles in the highways	Highways Act 1980, s.144
Free resource	Power to incur expenditure not otherwise authorised on anything which in the council's opinion is in the interests of the area or part of it or all or some of the inhabitants	LGA 1972, s.137
Gifts	Power to accept gifts	LGA 1972, s.139
Highways	Power to maintain footpaths & bridleways	Highways Act 1980, ss.43 & 50
	Power to light roads and public places	Parish Councils Act 1957 s.3

	Power to provide parking places for vehicles, bicycles and motor-cycles	Road Traffic regulation Act 1984 s.57
	Power to make a dedication agreement for a new highway or widening of an existing highway	Highways Act 1980, ss.30 & 72
	Right to veto application to magistrates court to stop up, divert or cease to maintain a public highway	Highways Act 1980, ss.47 & 116
	Power to complain to a local highway authority that a highway is unlawfully stopped up or obstructed	Highways Act 1908, s.130
	Power to plant trees etc. and maintain roadside verges	Highways Act 1980, s.96
	Power to prosecute for unlawful ploughing of a footpath or bridleway	Highways Act 1980, s.134
	Power to provide traffic signs and other notices	Road Traffic Regulation Act, 1984, s.72
Interests	Duty to declare an interest	LGA 1972, s.94
Investments	Power to participate in schemes of collective investments	Trustee Act 1961 s.11
Land	Power to acquire land by agreement, to appropriate land and to dispose of land	LGA 1972, ss.124, 126 & 127
	Power to acquire land by compulsory purchase	LGA 1972, s.125
	Power to accept gifts of land	LGA 1972, s.139
	Power to obtain particulars of persons interested in land	Local Government (Misc. Prov.) Act 1976, s16
Lighting	Power to light roads and public spaces	Parish Councils Act 1957, s.3 & Highways Act 1980, s.301
Litter*	Power to provide litter bins in streets and public places	Litter Act 1983, ss.5 & 6
Lotteries	Power to promote lotteries	Lotteries and Amusements Act 1976, s.7
Meeting	Duty to hold annual parish meeting	LGA 1972, Sch.12 para.23
	Duty to hold annual parish council meeting	LGA 1972, Sch.12 para.7
	Power to convene a parish meeting	LGA 1972, Sch.12 para.14
Mortuaries and post-mortem rooms	Power to provide mortuaries and post-mortem rooms	Public Health Act 1936, s.198

Newsletters	Power to provide information relating to matters affecting local government	LGA 1972 s.142
Nuisances*	Power to deal with offensive ponds, ditches and gutters	Public Health Act 1936, s.260
Open Spaces	Power to acquire and maintain open spaces	Public Health Act 1875, s.164 Open Spaces Act 1906, S.9, 10
Parish documents	Power to give directions as to custody of parish documents	LGA 1972, s.226
Parking facilities	Power to provide parking places for motor vehicles and bicycles	Road Traffic Regulation Act 1984, SS.57 & 63
Parks and pleasure grounds	Power to acquire land or to provide recreation grounds, public walks, pleasure grounds and open spaces and to manage and control them	Public Health Act 1875 s.164; LGA 1972 sch. 14 para. 27; Public Health Acts Amendment Act 1890 s.44
Public buildings and village halls	Power to provide buildings for offices and for public meetings and assemblies	LGA 1972, s.133
Public conveniences	Power to provide public conveniences	Public Health Act 1936, s.87
Publicity	Power to provide information about matters affecting local government	LGA 1972, s.142
Records	Power to collect, exhibit and purchase local records	Local Government (Records) Act 1962, ss.1 & 2
Recreation*	Power to provide a wide range of recreational facilities	Open Spaces Act 1906, s.9-10 Local Government (Misc. Prov.) Act 1976, s.19
	Provision of boating pools	Public Health Act 1961, s.54
Seats and shelters*	Power to provide roadside seats and shelters	Parish Councils Act 1957, s.1
Town and Country planning	Right to be notified of planning applications	Town & Country Planning Act 1990, para.8 of sch.1; para.2 of Sch.1A (Wales)
Town status	Power to adopt town status	LGA 1972, ss. 245, 245B
Tourism*	Power to contribute to encouragement of Tourism	LGA 1972, s.144
Traffic calming	Power to contribute to the cost of traffic calming measures	Highways Act 1980, s.274A
Transport*	Power to (a) establish car-sharing schemes; (b) make grants for bus services; (c)	Local Government and Rating Act 1997, s.26 Transport Act 1985 s106A

	provide taxi-fare concessions; (d) investigate public transport, road use needs; (e) provide information about public transport services	
Village signs	Power to use decorative signs to inform visitors	LGA 1972 s.144
Village greens*	Power to maintain, to make byelaws for and to prosecute for interference with village greens	Open Spaces Act 1906, s.15; Inclosure Act 1857, s.12; Commons Act 1876, s.29
Village Halls*	(see Community centres and Public buildings)	
War memorials	Power to maintain, repair and protect war memorials	War Memorials (Local Authorities Powers) Act 1923, s.1 as extended by LGA 1948, s.133
Water supply	Power to utilise any well, spring or stream to provide facilities for obtaining water from them	Public Health Act 1936, s.125