

# **St Cleer Parish Council Policy for Section 137 Grants**

## **Background**

Under Section 137 of the Local Government Act 1972, St Cleer Parish Council (the Council) has discretionary powers to award grants to local groups or organisations. A grant is any payment or gift made by the Council to an organisation for a specific purpose. The law requires that Section 137 grants must be “in the interests of or will directly benefit the area or its inhabitants, or of part of it, or of some of it” and “the direct benefit should be commensurate with expenditure.” (Local Government Act 1972 section 137).

The Council will use the criteria set by Department for Communities and Local Government Act to determine the maximum amount of grant aid that will be available on an annual basis.

## **The Grant process overview**

To apply for a Council grant you must be a charity, community group or local voluntary organisation with a dedicated bank account, operating or providing a service to the community of St Cleer. The Council defines a voluntary group as a not-for-profit organisation, set up and run by a voluntary, unpaid management committee. Grants are usually offered on a one-off basis to support a particular project, event, activity or the purchase of equipment. They are also open to new groups wishing to start up and receive a small contribution towards their running costs. The Council particularly welcomes applications from small or newly formed groups and those that have not applied to us before. Grants must be spent within 12 months of issue. Receipts for all spend must be provided and unspent monies returned.

To be considered for an award, applicants must make a written application using the Grant Application form which can be found at [www.stcleerparishcouncil.gov.uk](http://www.stcleerparishcouncil.gov.uk) All valid grant applications will be assessed by the Finance and General Purposes Committee and presented to the following quorate meeting of the Parish Council with a recommendation if eligible for consideration. Applications which do not comply with the requirements will be dismissed.

Applicants will be notified by the Clerk, of the Council's decision.

## **Criteria used by the Council to determine whether to issue a grant**

In general, the council will use the following primary criteria when deciding whether to issue a grant:

1. That the grant will bring a *direct benefit to the area* or any part of it *for some or all the inhabitants*
2. That the *benefit gained will be commensurate with the expenditure incurred*. This means that a council will not spend a disproportionately large amount on something which has no, or very little, direct benefit. For example, spending the whole of the Council's allowance under Section 137 for the benefit of two people would be unlikely to confer commensurate benefit to the expenditure incurred

3. That we can legally issue a grant (see Legal Restrictions section)
4. That the Council hasn't, or will not, exceed the legal maximum amount of grant aid during the current financial year

### **Secondary criteria under consideration may include:**

- Whether the organisation has completed the grant form correctly and in full
- Evidence of a well-managed group including previous experience and track record
- Financial sustainability and viability of group and/or project
- Evidence of compliance with previous grant award conditions
- Whether the organisation has a closed or restricted membership

### **What will not normally be funded**

- Grants that are covered under other mechanisms, such as Burial Grounds
- The activities of religious organizations, unless they can show they operate clear and open community activities which do not require membership or connection to the organisation and that the application will be of benefit to the community. (See appended NALC Guidelines)
- General operational and maintenance costs.
- Events that have already occurred, equipment already purchased, works already started or completed.
- Repayment of loans or cost of services, equipment or provisions in anticipation of a grant.
- Repayment of loans.
- "Upward funder" i.e. local groups where fund-raising is sent to a central HQ for redistribution.
- Applications will not normally be considered from national organisations or local groups with access to funds from national "umbrella" or "parent" organisations; unless funds are not available from their national bodies or the funds available are inadequate for a specified project.

### **Legal Restrictions**

For Legal reasons, the council cannot accept Section 137 Grant applications from:

- Individuals or appeals supporting an individual
- Organisations which support or oppose any political party
- Organisations that discriminate on the grounds of sex, race, disability, sexual orientation, religion and belief or age
- Organisations or establishments for whom Central Government, Health Authorities, or the County Council are the appropriate sole statutory funder
- Organisations that do not provide a service to the community of St Cleer
- General appeals

- Religious groups where funding is to be used to promote religious beliefs
- Arts & sports projects with no community or charitable element
- Medical research, equipment or treatment
- Animal welfare

### **Application Procedure**

Organisations requesting financial assistance should submit:

1. A completed application form, which includes:
  - Details of the project or activity, for which the grant is sought.
  - Details of the benefit to the local community within the Parish.
  - Details of the number of beneficiaries and what proportion of members/beneficiaries are residents of St Cleer. Details of any restrictions placed on who can use/access their services.
2. Confirmation that it complies with its equality obligations under the various pieces of anti-discrimination legislation.
3. A copy of their trading account and balance sheet for the last financial year or, for new initiatives, a budget forecast. (Note: The organisation must demonstrate a clear need for financial support.)
4. A copy of their written constitution, together with details of their aims and purpose.

IMPORTANT NOTE: All questions on the application form should be fully answered and additional appropriate information, which supports an application, must be provided for the request to be considered by the Parish Council.

### **Successful Applications**

- 1 The grant will be paid by cheque. It must be acknowledged promptly by the organisation, stating the amount granted and acceptance of any additional conditions and requirements imposed.
2. Organisations receiving grants are required to advise their users/members that a grant has been received from St Cleer Parish Council.
3. Any grant must only be used for the purpose for which it was awarded unless the written approval of the Parish Council has been obtained for a change in use of the grant monies, and any unspent portion of the grant must be returned to the Parish Council by the end of the financial year following the year in which it was awarded.
4. The Parish Council reserves the right to request feedback or receipts to demonstrate how the money has been spent and/or to inspect the outcome of the expenditure.

### **Publicising the Grant**

St Cleer Parish Council requires that grants are publicised. Successful applicants will be required to:

- Mention the grant in any press releases, online communications and website
- Non-compliance of publicity requirements is a breach of the funding agreement and may result in your grant claim being reduced, withdrawn or reclaimed.

Applicants must cover the cost of publicising the grant and this cannot be included in claims for grant reimbursement.

### **Objections to expenditure**

Expenditure will be open to be challenged by the auditor, or by a local government elector objector at audit (pursuant to s.16 Audit Commission Act 1998), on the basis that the expenditure is larger than the direct benefit to the area or residents would justify.

### **Related materials**

Sections 137 and 137(A) Local Government Act 1972



31 JANUARY 2018

## LO1-18 | 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's 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.

© NALC 2018

27 MARCH 2018

## **L03-18 | SECTION 137 EXPENDITURE: LIMIT FOR 2018-2019**

The Ministry of Housing, Communities and Local Government has confirmed that the appropriate sum for parish councils for the purposes of section 137(4)(a) of the Local Government Act 1972 ("the 1972 Act") for 2018-2019 is £7.86.

This is the amount that results from increasing the amount of 2017-18 (£7.57) by the percentage increase in the retail index between September 2016 and September 2017, in accordance with Schedule 12B to the 1972 Act.

© NALC 2018