

DITTISHAM PARISH COUNCIL

Incorporating the Hamlet of Capton and the Manors of Bozomzeal and Coombe

Clerk's Report

Financial Assistance to Churches

20/12/19, A Thom

DALC (Devon Association of Local Councils) Newsletter #28, 12 December 2019 contained the following article and a link to NALC (National Association of Local Councils) advice L01-18 Financial Assistance to the Church

NALC has issued a clarification of their legal view regarding assistance to the church, which is that the Local Government Act 1894 s.8 prohibits grants for works on property relating to the affairs of the church or an ecclesiastical charity. NALC stand by their view set out in Legal Briefing 01-18. We are aware of documents circulating which suggest that local authorities are able to award funding to churches but there has been no change to the legal position.

The legal advice is somewhat difficult to follow, so I wrote to DALC for clarification.

DALC has responded (emphasis added):

It depends whether it is a closed churchyard; if it is a closed churchyard, then the Local Government Act 1972 s.215 is a specific provision regarding the responsibilities of a council to maintain a closed churchyard. Since the council has this responsibility, it can contribute to a closed churchyard.

Assuming that the churchyard is not closed, then **in NALC's view the Local Government Act 1894 s.8 would take precedence and prevent the council from being able to make this payment.**

There is no case law regarding this, and it may be that in due course Parliament will offer some clarification but in the meantime, NALC's view is that a council considering making a payment to the church, including for churchyard maintenance, needs to consider whether it is prudent to take a course of action that it cannot be certain is legally valid.

I then wrote seeking clarification about the status of the upper churchyard of Ste George's Church and was advised:

If the second area is not formally closed and has not been adopted by the Parish Council then the advice remains the same for both areas, that the Parish Council cannot be certain that giving financial assistance to the churchyard is legally valid.

Parish Council's cannot legally make an expenditure unless they have a legal power to do so.

Prior to becoming aware of this specific legislation, I had advised DPC that it could approve expenditure using Section 137 of the Local Government Act 1972 which enables local councils to spend a limited amount of money for purposes for which they have no other specific statutory expenditure. The legal advice L01-18 explains that this general provision does not override the specific prohibitions in s.8 of the Local Government Act 1894.

I have also provided a standard document of legal powers for your information.