

Bath & North East Somerset Council		
MEETING:	Council	
MEETING DATE:	15 September 2016	
TITLE:	Kelston Parish Meeting: Conferring of Parish Council powers to borrow money	
WARD:	Bathavon North Ward	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1. Minutes from a Meeting held by Kelston Parish on 21 July 2016		
Appendix 2. Letter from Douglas Creed, Chair, Kelston Parish Meeting dated 5 September 2016		
Appendix 3. Promotional Leaflet – Kelston Community Broadband		
Appendix 4. Draft Order		

1 THE ISSUE

- 1.1 This report requests the Council to confer such parish council powers, on the Kelston Parish Meeting (Parish) as requested by the Parish Meeting.

2 RECOMMENDATION

- 2.1 The Council is asked to;

2.1.1 Make an order under Section 109 (1) of The Local Government Act 1972 Act (1972 Act) to confer on the Kelston Parish Meeting the power, available to parish councils, to borrow money;

2.1.2 Agree, that if Council so resolve, the order has immediate effect

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The conferring of this power upon Kelston Parish Meeting does not itself have any resource implications for the Council. Whilst the Council is required to comply with certain statutory notification this will be at a minimal cost.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Statutory considerations are set out in the report. Since there is no delegated authority to officers to make the necessary order the application is required to be considered and, if agreed, approved by Full Council which would make the order.

5 THE REPORT

- 5.1 The Parish resolved at a Meeting held on 21st July 2016 to request that the Council confer upon the Parish all powers of a parish council and the specific powers necessary to carry out borrowing as a parish council. The Minutes of the Meeting are attached at Appendix 1.
- 5.2 A letter dated 5 September 2016 from the Chair of the Parish requesting that “....B&NES confer upon the Parish meeting all powers of a parish council and the specific powers necessary to carry out borrowing as a parish council..” is attached to this report at Appendix 2.
- 5.3 The Council is only required to make a resolution as to the conferring of the specific power to borrow money
- 5.4 A leaflet as to the difficulties with slow broadband experienced in Kelston is attached at Appendix 3 and is understood to have been distributed to each household with an option to vote for upgraded broadband. It is not known what the response was. It appears that there has been adequate information given to the residents of the parish, by virtue of the distribution of the leaflet, to ensure that their views have been canvassed.
- 5.5 The Parish had previously applied for vouchers under prior Government broadband scheme. The scheme was apparently terminated before Kelston’s applications were processed. Information is provided in the leaflet which indicates that new provision can be made by ...”using a combination of new connection vouchers and public loans”.
- 5.6 Section 109 (1) of the 1972 Act states that, on the application of the parish meeting of a parish, not having a separate parish council, the district council may....(subject to grouping provisions) by order confer on the parish meeting any functions of a parish council. The power, however, only exists for the particular function that is conferred on the parish meeting and does not “convert” a parish meeting to a parish council.
- 5.7 Under Section 109 (2) of the 1972 Act where a district council makes such an order it is required to send two copies to the Secretary of State.
- 5.8 Paragraph 1 Schedule 2 of The Local Government Act 2003 (2003 Act) allows a parish council to borrow a sum of money. Before doing so, it must first receive an approval to borrow from the “appropriate person”, who is the Secretary of State (SoS) for the Department for Communities and Local Government (DCLG). There is no national limit on the total annual amount of borrowing approvals that will be granted and the amount that an individual council will be authorised to borrow will normally be limited to a maximum of £500,000 in any single financial year for any single purpose.
- 5.9 The SoS will generally apply the following criteria in deciding whether to give borrowing approval:

- 5.9.1 the borrowing should be for a purpose that would be capital expenditure as defined in section 16 of the 2003 Act;
- 5.9.2 the amount to be borrowed should not be less than £5 multiplied by the number of local government electors for the area of the council on the first day (1 April) of the current financial year. There are currently 131 registered electors in Kelston and so the minimum that could be borrowed would be £650.00;
- 5.9.3 any unallocated balances (including, where appropriate, capital receipts), beyond those required for the prudent financial management of the council, should be used in the project for which borrowing is required;
- 5.9.4 a parish council should have a realistic budget (this must be reasonably affordable, taking account of its effect on the council's precept) for the servicing and repayment of the debt;
- 5.9.5 Whilst the purchase of the asset, defined as civil works and cabling to provide broadband, would fall within the definition of capital expenditure, careful consideration would need to be given as to whether the precept would need to be increased in order to meet the amount of and the life of the loan. The Council understands that the the asset would have a maximum life of seven years.
- 5.10 The total loan required is said to be £130,000.
- 5.11 Under the Value Added Tax Act 1994 s.33 certain local authorities can obtain a refund of VAT. Section 96 (4) defines local authorities as;
- the council of a county, [county borough,] district,
 - London borough,
 - parish or group of parishes (or, in Wales, community or group of communities),
 - the Common Council of the City of London,
 - the Council of the Isles of Scilly, and any joint committee or joint board established by two or more of the foregoing
- 5.12 Parish Meetings are not defined in the Act as a local authority and therefore cannot reclaim VAT payable for the loan under section 33. The Parish is, however, researching whether it can be defined as a local authority under VAT rules and therefore obtain an exemption from paying VAT.
- 5.13 The Parish has informed the Council that it has robust business plan which was “constructed by an independent financial consultant within which conservative goals in terms of uptake, revenue and costs have been set”. In addition that the Parish has taken independent legal advice and is “comfortable that all the necessary commercial aspects of the project have been addressed”.

6 RATIONALE

6.1 The rationale for referring this specific issue to Council for resolution is set out in the report.

7 OTHER OPTIONS CONSIDERED

7.1 Kelston Community Network Community Interest Company (CIC) was established by several residents of the Parish in September 2015. A CIC is defined as "...a limited liability company incorporated under the Companies Act 2006 by the Registrar of Companies with the specific aim of providing benefit to a community. It must conform to company and insolvency law in the same way as other UK companies and is regulated under company and other law".

7.2 A CIC is required to adopt certain statutory clauses in its constitution which includes a clause to lock in the assets to providing benefit to the community. This means that, subject to the CIC meeting its obligations, its assets must either be retained within the CIC, to be used for the community purposes for which it was formed, or, if they are transferred out of the CIC, the transfer must be made under certain circumstances.

7.3 Subject to its articles CICs have the same borrowing powers as any other company and generally will be able to borrow and pay normal commercial rates of interest to lenders. Therefore, depending on the CIC's constitution, the Parish can obtain a loan using its status as a CIC but this would be subject to a higher rate of interest. It is understood, however, that the CIC cannot obtain a loan from the PWLB as it is not a local authority and therefore cannot benefit from the lower interest rate available to a local authority. If a loan was obtained by other means then it appears that the Parish need not make an application under s.109 of the 1972 Act.

7.4 In addition it has been proposed that the Parish Meetings of Kelston and North Stoke are joined in order to become a Parish Council so that the new Parish Council can exercise its borrowing power to obtain the loan. This can be achieved either under s.11 of the 1972 Act (Orders for grouping parishes, dissolving groups and separating parishes from groups) or by way of a community governance review (CGR) under the Local Government and Involvement in Public Health Act 2007. The former is a much shorter procedure. If a grouping order was made and a new Parish Council was established, it would still be limited to the legal restrictions set out in the 2003 Act. A CGR can take 12 months before a grouping order, under the 2007 Act, can be made.

8 CONSULTATION

8.1 Consultation on the conferring of parish council powers on the Parish is not legally required under the 1972 Act but see paragraph 5.4.

8.2 Consultation on this report has taken place with the Monitoring Officer and Section 151 Officer who have cleared it for publication.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	<p>Maria Lucas maria.lucas@bathnes.gov.uk 01225 395171</p> <p>David Dixon, Community Engagement Manager, Strategy & Performance. Tel 01225 396532</p>
Background papers	<p>The Local Government Act 1972</p> <p>The Local Government Act 2003</p>
<p>Please contact the report author if you need to access this report in an alternative format</p>	