Department for Communities and Local Government

NALC

C10 110(b)(i)

ALL ABOUT THE BORROWING APPROVAL SYSTEM

A GUIDE TO PARISH AND TOWN COUNCIL BORROWING IN ENGLAND

Introduction

1. In this guide, all references to statutory provisions are to provisions in the Local Government Act 2003 ('the 2003 Act'). References to parish councils include those designated as town councils, village councils, community councils, neighbourhood councils and city councils in England.

2. This guide replaces all previous guidance on borrowing by parish councils in England and reflects the legal framework in force as at 1 April 2013. The law that allows a parish council to borrow money is contained in paragraph 2 of Schedule 1. Before such a council can borrow a sum of money, it must first receive an approval to borrow from the "appropriate person": in England the Secretary of State by way of the Department for Communities and Local Government (DCLG), and in Wales, the Welsh Ministers. Evidence of the borrowing approval may be required at audit.

3. This guide sets out the criteria that the Secretary of State generally applies in deciding whether to give borrowing approval, and how parish councils should go about applying for approval. It applies only to England. Community and town councils in Wales should contact the Local Government Finance Division of the Welsh Government (telephone: 029 20 823227 or 029 20 825223) for details of the approval system applicable to them.

4. There is no national limit on the total annual amount of borrowing approvals that will be granted. Councils should only apply for borrowing approval when they are fully ready to take up the borrowing, for example, when planning permission has been obtained. Applications by councils for borrowing approval should be sent to the local County Association affiliated to the National Association of Local Councils (NALC). This applies whether or not the council is a member of NALC.

5. If the Association considers that the application form is complete with no obvious omissions or errors, and that the application is made in good faith, the application will be forwarded to DCLG. Where an Association has any concerns it will raise the matter with the council. The council may, if it wishes, take up any disputed issue with DCLG. The review by the County Association is intended to assist councils in submitting well-founded applications to DCLG. The County Association will provide a brief factual report to DCLG with the application.

Local Accountability and Transparency

6. The Government's localism agenda aims to place more power into people's hands. For democratic accountability to increase, local people need to be able to hold local authorities to account over how they spend public funds and the decisions that are made on their behalf. This principle applies to decisions made by all levels of local government, including parish councils. Transparency is the foundation of this accountability and, if people are to play a bigger role in society, they need to have the tools and information to enable them to do so.

7. When considering whether to apply for borrowing approval, parish councils should be fully open and transparent with their residents and taxpayers in all their dealings. Details of the project and plans for borrowing and loan repayment must be available to residents from an early stage. This could include discussion of proposals in open meetings, and ensuring that information is available for the public before and after a decision is taken, for example on the council website or published in local newsletters. Evidence of this will be taken into account in considering whether to give approval for borrowing.

What is a Borrowing Approval?

8. It is a formal approval issued by the Secretary of State to borrow money.

9. The Secretary of State's decision on the borrowing application will be sent direct to the Clerk to the council. A copy of the decision letter will also be sent to the Chair of the council and the local County Association. Where approval to borrow is given, as well as containing the legal authority for the council to borrow money, the approval will state the maximum amount of money that can be borrowed, the purpose for which the money may be used, the period within which money must be borrowed, and the maximum period within which the borrowing must be repaid.

10. Where a council wishes to use borrowed money for a purpose other than that specified in the borrowing approval letter, written consent to the change of use must be obtained from DCLG, prior to committing to the expenditure.

Who can apply for Borrowing Approval?

11. Any parish council in England.

When is a Borrowing Approval not required?

12. Under paragraph 2(3)(a)(i) of Schedule 1, no approval is required for borrowing by temporary loan or overdraft from a bank or otherwise of sums which the council may temporarily require to meet expenses pending the receipt of revenues receivable by it in respect of the period of account in which the expenses are chargeable.

13. A council may also borrow by temporary loan or overdraft pending the raising of the loan permitted by a borrowing approval (paragraph 2(3)(a)(ii) of Schedule 1). A council must be in possession of the borrowing approval when the temporary loan is

taken out, but no second approval is required. The temporary loan must be for the purpose of meeting expenses intended to be met by the approved borrowing. A council can also raise a further loan to repay the original loan without the need for another approval, so long as the new borrowing takes place within the fixed period (paragraph 2(3)(b) of Schedule 1). For the meaning of "fixed period" see paragraph 34 of this guide.

14. In all other circumstances, borrowing approval is required.

How is an application for borrowing approval made?

15. In the first instance, councils should complete the application form included in this guidance. Contact should also be made with the local County Association who will process the application form once it is completed. All questions in the form need to be answered and all supporting information must be supplied (see paragraph 18 below). The making of the application requires approval by resolution of the full council (paragraph 4 of Schedule 1). The completed form must be sent in hard copy to the County Association (see paragraph 4 above).

What information must be provided?

16. The application form requires the following information:

- Name and contact details of Council and Clerk
- Name and contact details of Chair of Council
- District/Unitary Council area
- Purpose of borrowing
- Total cost of the project (see paragraph 19 below)
- Details of funding from Council's own resources
- Details of funding from other sources
- Whether funding from other sources is confirmed
- Amount to be borrowed
- Proposed borrowing source
- Intended borrowing term
- Details of current loans outstanding
- Current level of precept
- Number of electorate
- Value and purpose of all funds held
- Confirmation of the agreement of full council

17. The form must be signed by the Chair of the council and the responsible financial officer (in most councils the Clerk is also the responsible financial officer, but the post is sometimes a separate appointment).

18. In addition the form must be accompanied by:-

- a copy of the council's budget for next year (or for the current year if next year's is not available),
- a copy of the written report considered by the council in reaching its decision to apply for borrowing approval (see paragraph 25(d) below),

- the full minutes of the meeting at which the resolution to make the application was passed,
- evidence that residents have been consulted on the following:
    i) the proposed project,
    ii) the council's intention to borrow, and
    iii) proposals to increase the precept to meet borrowing costs, if applicable.

A basic checklist for supporting information can be found at the back of the application form for ease of reference.

19. Where the council intends to provide a grant to another body the references to "project" in this guide and in the application form apply to the assistance being provided by the council, not to the project towards which the assistance is given. For example, if a council wishes to borrow £50,000 to part finance a grant of £100,000 towards the construction by a local charity of a village hall costing £250,000, the application form should show £100,000 as the total cost of the project and £50,000 as the amount to be borrowed, and explain how the remaining £50,000 is to be financed by the council.

Parish council precepts and council tax referendum principles

20. When planning budgets and considering whether to apply for borrowing approval, parish councils should bear in mind the provisions of Chapter 4ZA of Part 1 of the Local Government Finance Act 1992 relating to council tax referendums. Each year, the Secretary of State will determine "excessiveness principles". If an authority breaches those principles, it must arrange a referendum to seek the approval of its local electors to the excessive increase in council tax it has set. For 2014-15, no principles were set for parish councils: so the new referendum provisions did not apply to them for that year.

21. However, Ministers have made it clear that when setting principles in future years, the Secretary of State will consider whether principles should be set in respect of parish councils, in light of the extent to which restraint in relation to council tax in 2014-15 has been exercised.

22. Ministers are putting on notice that they are prepared, if necessary, to apply the referendum thresholds to larger town and parish councils from 2015-16 onwards to provide protection for local taxpayers and extend the principle of direct democracy.

23. If the Secretary of State decides to determine council tax referendum principles in relation to parish councils for the financial year 2015-16, (and in subsequent financial years), a parish council would need to consider whether its relevant basic amount of council tax[1] was excessive by reference to those principles. Councils with precept increases resulting in a relevant basic amount of council tax which exceeded the principles would be required to hold a referendum to seek local electors' approval to that increase. The result of the referendum would be binding and where an

[1] For the meaning of "relevant basic amount of council tax" see section 52ZX(5) of the Local Government Finance Act 1992.

increase was not approved, the parish precept would be substituted with a precept that produced a relevant basic amount of council tax that was not excessive by reference to the principles. Parish councils would be responsible for meeting the costs of any referendum.

24. It should be noted that the Secretary of State will **not** exclude increases in parish council tax precepts attributable to a borrowing approval when considering whether to set council tax referendum principles for parish councils in 2015-16 and in future years.

25. The Secretary of State intends to determine excessiveness principles in parallel with the process for deciding the annual local government finance settlement for each year; so it is expected that principles will be proposed in November/December alongside the announcement of the provisional settlement.

What are the criteria for borrowing approval?

25. The Secretary of State will generally apply the following criteria in deciding whether to give borrowing approval:

a) the borrowing should be for a purpose that would be capital expenditure as defined in section 16. Appendix A to this guide explains what is covered by the section 16 definition;

b) the amount to be borrowed should generally not be less than £5 multiplied by the number of local government electors for the area of the council as counted at the latest register for the electoral roll. However, the Department will consider applications for a lower borrowing amount where the total project cost is above the threshold and grants or other resources intended for the project expenditure will be refused or reduced if the borrowing does not go ahead;

c) 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;

d) the council should have a realistic budget (this must be affordable, taking account of its effect on the council's precept) for the servicing and repayment of the debt. The Secretary of State will expect to see that the affordability of the loan charges and any other revenue costs arising from the project is demonstrated in the written report to the council recommending the borrowing application. A copy of the report should be submitted with the application form. The report should provide:

- an estimate of the annual costs, and an indication of whether they will be covered by reductions in other expenditure, or by additional income from the precept or other sources,
- in cases where an increase in the precept is proposed, an estimate of the amount of the increase in both monetary and percentage terms, and recognition that any proposed increase in precept may be subject to council tax referendum principles in future years,
- evidence that any risks and uncertainties affecting the financing of the project have been taken into account in assessing its affordability,

- details of any significant financial developments that might affect the ability of the council to finance the costs in future years, so far as can reasonably be foreseen.

e) The council should have consulted local residents on the project and associated borrowing. The format of consultation with residents is a matter for the council to decide, however councils should note the following:

- details of the project and plans for borrowing and loan repayment must be accessible to residents from an early stage,
- decisions on borrowing must be taken in an open and transparent way, following discussion in open meetings,
- inclusion of the matter on an agenda for a public meeting of the council will not, in itself, be considered sufficient evidence of consultation,
- the council should ensure that information about the progress of the project continues to be available to residents following the approval to borrow,
- in particular, any proposal to increase the precept to meet borrowing costs **must** be backed by evidence of public support.

When should a council apply?

26. All councils are encouraged to let their County Associations know of their borrowing requirements as soon as possible. However, councils should not apply for borrowing approval until all negotiations have been completed and all other consents (eg planning permission) have been obtained. If an applicant council is successful, processing of the borrowing approval should generally take about 15 working days from the date of its receipt by DCLG. The borrowing approval will authorise the council to take out a loan within a period of twelve months starting with the date of issue of the borrowing approval.

How much can a council borrow?

27. 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.

28. Where borrowing approval is sought for an amount higher than £500,000, DCLG may issue the borrowing approval phased over the life of the project. An approval-in-principle for the full amount will normally be issued at the outset of the project, with formal approval letters issued at stages agreed with the council. DCLG may request project progress reports at any time during the phased approvals process.

29. A council wishing to borrow more than £500,000 is encouraged to contact the county association and DCLG as early as possible to discuss the approvals process.

Where can councils go for funds?

30. Councils may not, without the consent of HM Treasury, borrow otherwise than in sterling (section 2(3)). In practice, most councils are likely to obtain funds from the Public Works Loan Board or the clearing banks. When councils apply for funds, the

Public Works Loan Board will insist that they have sight of the original borrowing approval. Loans may also be taken out from private or voluntary sector organisations, or from individuals. Irrespective of the proposed source of borrowing, councils must have borrowing approval in place before arranging a loan. Evidence of the borrowing approval may be required at audit. Councils are advised to seek appropriate advice.

31. Councils are reminded that the decision to borrow must be taken by the full council (paragraph 2(4) of Schedule 1). This is a separate decision from the decision to apply for borrowing approval. Lenders will generally offer a variety of loan structures such as fixed or variable repayment rates of interest, discount or premiums for early repayment in certain circumstances.

Timing of borrowing

32. A council may borrow by temporary loan or overdraft pending the raising of the loan permitted by a borrowing approval (paragraph 2(3)(a)(ii) of Schedule 1). This means that progress on a project need not be delayed until the longer-term borrowing is arranged. See paragraph 12 above for the requirement for borrowing approval in these circumstances.

Security for the lender

33. All borrowing by a council, together with interest on it, is charged indifferently on all the revenues of the council (section 13(3)). A council cannot mortgage or charge any of its property as security for money borrowed or which it otherwise owes; any security given in breach of this provision is unenforceable (section 13(1) and (2)).

Period of loan

34. Councils must determine the period within which the money borrowed will be repaid, and they are required to make charges to revenue account sufficient to repay the principal within that period and meet the interest charges on the borrowing (paragraphs 3 and 5 of Schedule 1). The period determined is known as the "fixed period", and the council's determination requires the consent of the Secretary of State. The borrowing approval letter will normally specify the maximum period for the repayment of the loan. The maximum period will begin on the date on which the money is borrowed, and will generally be either:

- *50 years*, for the acquisition of, or works on or to, land, buildings, roads or structures, or the making of grants for such purposes; or
- *10 years*, in all other cases.

35. Councils are asked to consider carefully whether it would be appropriate to borrow for the permitted maximum or for a shorter period. Generally the borrowing period should be no greater than the period for which the expenditure is forecast to provide benefits to the council (or the body being assisted). Thus if a piece of equipment is only thought likely to last for five years, it would be more appropriate to borrow for five years than for the ten years that the borrowing approval might permit.

When a borrowing approval is no longer required

36. If a council finds it no longer needs the borrowing approval issued to it, it must inform DCLG.

37. If a council finds that it does not need to borrow the full amount as specified in the approval letter, DCLG should be informed of the actual loan amount as soon as is reasonably practical.

Best Practice

- Seek appropriate advice and guidance early.
- Programme prudent use of balances as well as borrowing.
- Budgets or revised budgets should be considered before applying for borrowing approval.
- The borrowing term should not exceed the life of the asset.
- Even if the council secures an interest free loan, it will still require borrowing approval.
- Consult local residents about the proposed project and the intention to borrow.
- Make sure residents have access to as much information as possible about the project and loan, both before and after the decision to borrow.
- The original borrowing approval letter should be kept in safe custody.

Issued March 2014

Department for Communities and Local Government

NALC

APPLICATION FOR BORROWING APPROVAL FOR TOWN/PARISH COUNCILS

- If you have any queries about completing this form please contact your local county association.
- When completing this form please use CAPITALS.
- Once completed and signed please send this form to your local county association.

1. Name of Council	
2. Name of Clerk **Working Address (inc. Postcode)** **Telephone** **Email address**	
3. Name of Chair **Home Address (inc. Postcode)** **Telephone** **Email address**	
4. District/Unitary Council area	
5. Purpose of Borrowing Please give a brief description of the purpose for which funds are required and the amount(s) of finance involved:- **a) Purchase of land/buildings** **b) Construction/building works** **c) Provision of other assets** **d) Provision of grant to another body** **e) Other - please specify**	
6. Total Contract/Project Value **Minus** **Funding from Council's own resources** **Funding from other sources** **Equals** **Amount to be borrowed**	£ £ £ £
7. Deadline for approval (if applicable) If borrowing is required by a specific date – eg an auction date, or to meet matchfunding requirements - give details here.	
8. Is funding from other sources confirmed?	**Yes No**
8. Proposed Borrowing Source	
9. Intended Borrowing Term **(please specify the number of years)**	

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10. Details of Existing Loans **Date Taken Out** **Amount Outstanding** **Unexpired Term** **Source**	**1st loan 2nd loan 3rd loan 4th loan** **£ £ £ £**
11. Precept for current year	**£**
12. Number of Electorate	
13. Value and purpose of all funds, capital/revenue reserves and balances currently held	

14. Approval of Full Council

The above application was agreed by resolution of the full council on (date), the Report to Council and Budget attached have been taken to and approved by the full Council, and the draft Minutes attached have been seen and authorised for submission by the Chairman.

The Council undertakes to notify the Department for Communities and Local Government (DCLG), as soon as reasonably practicable, in the event:-

- of not exercising the approval, or,
- it finds that the original amount requested is greater than the actual borrowing need.

SIGNED..... **DATE**.....
(Chair of the Council)

NAME.....

SIGNED..... **DATE**.....
(Responsible Financial Officer)

NAME.....

APPENDIX A

DEFINITION OF CAPITAL EXPENDITURE

1 Section 16 of the 2003 Act defines "capital expenditure" as "expenditure of the authority which falls to be capitalised in accordance with proper practices". In turn section 21(2) defines "proper practices" as those accounting practices that local authorities are required to follow by virtue of any enactment, or of a code of practice or other document specified in regulations. Under this power the Secretary of State has specified (among other documents) the CIPFA/LASAAC *Code of Practice on Local Authority Accounting in the United Kingdom* ("the Code"). The Code does not apply to parish councils. However, the first of the criteria set out in paragraph 24 of this guide relies on the Code's provisions to provide a definition of capital expenditure for parishes consistent with the definition applicable elsewhere in the public sector. This is done purely to ensure that all applications are judged against uniform criteria, and does not imply that the Code is in any way applicable to a parish council's accounting statements.

2 The key relevant paragraphs of the 2012-13 Code for the purposes of the capital expenditure definition are as follows:

> ***4.1.2.11 Property, plant and equipment*** *are tangible assets (ie assets with physical substance) that are held for use in the production or supply of goods and services, for rental to others, or for administrative purposes, and expected to be used during more than one period.*
>
> ***Recognition***
> ***4.1.2.16*** *The cost of an item of property, plant and equipment falling under this section of the Code shall be recognised (and hence capitalised) as an asset on a local authority Balance Sheet if, and only if:*
> - *it is probable that the future economic benefits or service potential associated with the item will flow to the authority, and*
> - *the cost of the item can be measured reliably.*
>
> ***4.1.2.17*** *Costs that meet the recognition principle in paragraph 4.1.2.16 include initial costs of acquisition and construction, and costs incurred subsequently to enhance, replace part of, or service the asset.*

The Code goes on to exclude day-to-day servicing (ie repairs and maintenance) from the definition if they do not add to the future economic benefits or service potential of the asset.

3 In addition, section 16 allows the Secretary of State to adjust the definition of capital expenditure by regulation, and, in the case of a particular authority, by direction. Regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146), as amended, provides as follows:

BORROWING APPROVAL APPLICATION SUPPORTING INFORMATION CHECKLIST FOR TOWN AND PARISH COUNCILS	
Have you provided a copy of the council's budget for this year, and/or next (if available), showing the provision made to meet the loan costs? If the budget papers do not clearly show this, please provide additional details of how the loan will be funded.	Y/N
Have you included a copy of the full report to the council? This should include a breakdown of the proposed works and estimated costs, together with plans and drawings, where appropriate.	Y/N
Have you supplied a full breakdown of funding sources (ie. named grant contributors, amounts to be used from reserves, other resources)?	Y/N
Has the council consulted local people about the planned project, the intention to borrow and any increase in precept for this purpose? Have you provided evidence of public support, in particular for any increase in the precept to support the loan payments (e.g. local newsletters/websites/result of consultation exercise)?	Y/N

Please send signed, completed forms and all supporting information to your county association of local councils.
Failure to submit all required information will delay your borrowing approval.

Expenditure to be capital expenditure

25. —(1) For the purposes of Chapter 1 of Part 1 the following expenditure of a local authority, incurred on or after 1st April 2004, shall be treated as being capital expenditure insofar as it is not capital expenditure by virtue of section 16(1) —

(a) expenditure incurred on the acquisition or preparation of a computer program, including expenditure on the acquisition of a right to use the program, if the authority acquire or prepare the program for use for a period of at least one year for any purpose relevant to its functions;

(b) subject to paragraph (2), the giving of a loan, grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the authority, be capital expenditure;

(c) the repayment of any grant or other financial assistance given to the local authority for the purposes of expenditure which is capital expenditure;

(d) subject to paragraph (3) the acquisition of share capital in any body corporate;

(e) expenditure incurred on works to any land or building in which the local authority does not have an interest, which would be capital expenditure if the local authority had an interest in that land or building;

(ea) expenditure incurred on the acquisition, production or construction of assets for use by or disposal to, a person other than the local authority which would be capital expenditure if those assets were acquired produced, or constructed for use by the local authority; and

(f) the payment of any levy by a local authority under section 136 of the Leasehold Reform Housing and Urban Development Act 1993 (levy on disposals)

(2) Where the expenditure referred to in paragraph (1)(b) is a loan given by a parish council or charter trustees to any person, it shall not be treated as being capital expenditure by virtue of this regulation.

(3) Where the expenditure referred to in paragraph (1)(d) is—

(a) an investment in a money market fund; or

(b) an investment in the shares of a company to which Part 4 of the Finance Act 2006 (Real Estate Investment Trusts) applies; or

(c) the acquisition of shares in an investment scheme approved by the Treasury under section 11 (1) of the Trustee Investments Act 1961 (local authority investment schemes).

it shall not be treated as being capital expenditure by virtue of this regulation.

Parish councils should note in particular the effect of paragraph (2) of the regulation.