**ASHBY DE LA ZOUCH TOWN COUNCIL**

**Report to: Leader of the Town Council.**

**Date: 26th April 2024.**

**Subject: Special Expenses/Concurrent Functions.**

**Summary: The purpose of this report is to provide a briefing on the decision of the District Council on Thursday 22nd February 2024 to move its expenditure on closed churchyards, inter alia, from ‘special expenses’ to the general fund budget for the financial year 2024/25.**

**Introduction.**

NWLDC is responsible for a number of closed churchyards within its area. In order to do so it has for many years levied a ‘special expenses’ precept upon the residents of the respective parish. This in accordance with the Local Government Finance Act 1992 chapter 14 section 35 (2) (d):

“any expenses incurred by a billing authority in performing in a part of its area a function performed elsewhere in its area by …..a parish council…. ***are the authority’s special expenses*** unless a resolution of the authority to the contrary effect is in force” [my emphasis].

This is called ‘concurrent expenditure.’ Concurrent expenditure is payment for services provided in some parts of an area by the District Council and in others by a parish/town council. This occurs because parish councils will charge within their precept for the functions they carry out and where the function is being carried out by the District Council in non-parished areas, it will charge for those functions within its precept too (these are called ‘concurrent functions’).

Treating those items as special expenses instead means that only those in unparished areas who get the benefit of the function pay the District Council for it, whilst parishes continue to pay their parish council, meaning nobody ends up paying twice.

Government guidance issued in May 2002 provided a list of examples of facilities/functions across the country that were being exercised concurrently. These are detailed in Appendix A. This should not be relied on as a definitive list, the deciding factor is that the function must be carried out by the Billing Authority in only part of its district, and the same function must be carried out in another part of the district by one or more Parish/Town councils.

**Special Expenses.**

The Local Government Finance Act 1992 provides for different amounts of council tax to be calculated for different parts of the district e.g. parished and unparished areas, depending on what, if any, special items relate to those parts.

A special item is an item which relates to only part of the district council’s area. Where functions are provided in part of a billing authority’s area by a parish council, sections 34 and 35(1)(a) of that Act ensure that only council taxpayers in that parish pay towards the cost of the precept issued by that parish council. A local precept is one ‘special item.’ ‘Special Expenses’ are another ‘special item.’

In order for expenses incurred in performing any function of a district council to be special expenses under section 35(2)(d), the function must be carried out by the district in only part of its area, and the same function must be carried out in another part of the district by one or more parish councils. The detailed identification of concurrent functions is therefore essential for using this special expense provision.

Special Expenses are currently in place for the following areas in North West Leicestershire:

• Appleby Magna;

• Coalville;

• Coleorton;

• Hugglescote and Donington-le-Heath;

• Lockington cum Hemington;

• Measham;

• Oakthorpe, Donisthorpe & Acresford;

• Ravenstone;

• Stretton-en-le-Field;

• Whitwick.

At the full District Council on Tuesday 16th November 2021 the District Council approved a ‘Special Expenses Policy’ paper (version 1.0). This identified special expense items for the following services:

* All Cemetery provision;
* Parks, Open Spaces and Recreation Grounds including:

• Closed churchyards

• Open spaces, parks and play areas that are maintained by NWLDC in parished areas;

• Open spaces, play areas, parks, pavilions and sportsgrounds in Coalville;

* Coalville Town Centre Support:

• Coalville in Bloom

• Support given to ‘Local’ events

• Christmas Lights and Trees

• Community Art.

However as part of the process of setting the 2024/25 budget for special expenses a ‘root and branch’ review of all income and expenditure in relation to special expenses was undertaken by the District Council. Apparently this review, and following legal advice by Counsel, identified that expenditure in relation to closed churchyards and the subsidy in relation to grounds maintenance at Owen Street Coalville had been “incorrectly” charged as a special expense.

It is not clear what this legal advice consisted of, as it has not been disclosed to members of the District Council or the public. Nor is it clear why such legal advice was necessary as section 35(2)(d) Local Government Finance Act 1992 appears to have a get out of jail clause for the District Council as follows:

“any expenses incurred by a billing authority in performing in a part of its area a function performed elsewhere in its area by …..a parish council…. are the authority’s special expenses ***unless a resolution of the authority to the contrary effect is in force***” [my emphasis].

As a result of this review and legal advice the District Council has now decided at full Council on Thursday 22nd February 2024 to approve an updated ‘Special Expenses Policy’ (version 2). The effect of the revised policy is to amend the above paragraph to read as follows:

“NWLDC levies Special Expenses in respect of the following services that it has identified are being delivered elsewhere by one or more parish or town councils - within the district:

* Cemeteries and burial grounds
* Closed cemeteries and burial grounds
* Open spaces
* Parks and playgrounds/play areas(including any facilities provided on site);
* Bowling greens and pavilions.
* Events and decoration that make the area attractive to visitors, for example:

• The provision of floral displays, local events

• Christmas Lights and Trees

* Maintenance of highway land (including grass cutting and flower beds)
* Recreation grounds

NWLDC has also identified some services that do fall under the definition of special expenses under the Act but it has resolved to **not** treat them as special expenses, which are as follows:

* Closed churchyards;
* Maintenance of leisure centres and football club pitches;
* War memorials;
* Street furniture (including waste bins, bus shelters and public benches); and
* Urban forests/adventure parks/woodlands.

Those expenses that are not treated as a special expense…shall be charged to either the Council’s **general fund or housing revenue account, as appropriate**.” [my emphasis].

In other words, the tax payers of the whole district, including Ashby, are now expected to pay for the services detailed above which are no longer considered to be ‘special expenses’ rather than just the tax payers for the area in which the services are delivered. This is despite the fact that many if not all of these services are already being delivered by hard-pressed parish and town councils who have precepted their local tax-payers to do so.

The District Council’s apparent justification for this new approach is as follows:

• “Closed churchyards – due to the nature/cost of maintenance, the [District] Council will be responsible. The cost of liabilities associated with the boundary walls and structures with these closed churchyards can be extremely high and will not be able to be met from the special expense precepts as the increase required to fund from precepts would exceed the Council Tax referendum limits;

• Maintenance of leisure centres and football club pitches – typically used by multiple teams, clubs and community groups and serve a broad range of users and contribute to the overall well-being of the community in the District;

• War memorials, street furniture (including waste bins, bus shelters and public benches), urban forests/adventure parks/woodlands are not local to special expense areas and are for the wider benefit of residents across the district.”

To claim that some or all of these functions are “for the wider benefit of residents across the district” or “contribute to the overall well-being of the community in the District” are, at best, highly debatable, at worst, risible.

It is also noted that “the subsidy in relation to grounds maintenance at Owen Street Coalville has been removed from future Coalville special expense budgets and included in the general fund.” Owen Street is apparently the exclusive home of Coalville Town Football Club. Ashby de la Zouch Town Council has been most careful to try and ensure that local tax payers do not subsidise local sports clubs. This does not appear to be a concern for the District Council.

**Double taxation.**

What is double taxation?

Double taxation is where the residents of an area are paying twice for particular public services. It can happen because some local services are ‘concurrent functions’ (see above) – that is, they can be managed and delivered either by the parish/town Council or by the District Council. Typically double taxation comes about in relation to the most locally delivered services, such as maintaining children’s play areas, closed churchyards, playing fields, open spaces, public conveniences and footpaths.

Should double taxation be addressed?

The National Association of Local Councils (NALC) document: ***‘Managing Double Taxation a Guide for Local (Parish and Town) Councils and Principal Local Authorities’*** (January 2011) is clear that the issue of double taxation should not be swept under the carpet and go unconsidered.

Any decision whether or not to tackle double taxation should be as a result of having considered the local issues. NALC sets out the following five reasons to resolve any potential double taxation:

• **Fairness** – it is inequitable if taxpayers are treated differently for no good reason. Residents in certain areas should not be paying both (in full) for the service in their locality as well as contributing to its provision elsewhere;

• **Accountability** – an often quoted principle is that ‘finance should follow function.’ The organisation responsible for delivering a service – the local council in this case – should also hold the relevant budget. This strengthens democratic accountability by making clear who is responsible for decisions about that service;

• **Sending the right signal** – public policy aims to encourage local councils to expand their role, so that services better meet local needs. However, allowing double taxation to arise discourages local councils from doing just that;

• **Partnership** – it is a practical way in which tiers of local government can demonstrate partnership intent, reaching agreement about concurrent services and their funding;

• **Taxpayer interests** – local Councillors have a legal duty to act in the best interests of their taxpayers. It is argued that this should include considering concerns about double taxation.

In the report to the full District Council meeting on Thursday 22nd February 2024 the following is stated in relation to the issue of double taxation:

“Consideration of the whether an item should be treated as a special expense means that the [District] Council needs to consider the issue of double taxation. Double taxation can occur when residents pay for a service via the parish or town council precept and a proportion of the cost of the same service via their council tax bill, along with other residents. This is a complex area and there is no single national approach to this as different councils have different powers and responsibilities, and they might provide different levels of service to different areas. Therefore, it is not possible to compare services and costs across different authorities.”

It is also claimed that “the Section 151 officer has taken a balanced approach bearing in mind the [District] Council’s responsibilities, costs, relative impact of double taxation and nature of the services”.

**Conclusions.**

It is not clear what has precipitated this sudden change of policy by the District Council. The special expense arrangements have been in place in the district for many years and appear to have been working well. This is a typically opaque decision by the District Council.

Nor is it clear why it is claimed that NWLDC required legal advice on this matter on the issue that it may have been acting irregularly or unlawfully in treating some items as special expenses rather than being paid from the general fund budget. All that would appear to be required was a resolution of the District Council in accordance with the Local Government Finance Act 1992 chapter 14 section 35 (2) (d). This legal advice has not been released to elected members or the public.

No serious attempt has been made by the DC to address the issue of double taxation and the five principles set out by NALC above.

No attempt has been made by the District Council to address the issues which underpin the financial relationship between itself and the parish/town sector.

The justification of NWLDC for its actions to remove areas of expenditure from special expenses and move them to the general fund are, frankly, paper-thin.

The Town Council has sought its own advice from NALC. It’s response was as follows:

*“The question of special expenses has always been problematic. It is further complicated by the (discretionary) power for a Principal Authority (PA) to make a Concurrent Function Grant to offset the Double Taxation effect of Special Expenses on Parish Councils Precept.

As the quoted advice states at 4.5 ‘the Council must treat its performance of that function as a special expense, unless the Council explicitly decides not to do so.’ Once again, the PA has a discretionary "get out".

In practice there is little that a Local Council can do if the PA decides to hide behind it's discretionary powers – indeed even normal Concurrent Function Grants are a very rare beast (I've only ever seen them in existence in one District in my 28 years' experience, and then not for many years). I fear that any attempt at persuasion to the contrary is doomed to failure, even though I have every sympathy with Ashby's problem.”*

Finally, therefore, although we may agree at the Town Council that the changes that have been implemented are unfair, unjust, inequitable, one-sided, unjustifiable and indefensible, I fear that there is little practically that we can do about it.

**Jack Fargher**

**Town Clerk**

**Ashby de la Zouch.**

**Appendix A**

**List of Concurrent Functions**

Allotments

Boating pools

Bus shelters Car parking (off street)

CCTV(installation and maintenance)

Cemeteries and burial grounds

Christmas lights and trees

Closed cemeteries and burial grounds

Commons and common pastures

Community centres

Crematoria Entertainment and the arts

Footway lighting

Grants to bus operators

Grass cutting Information services (transport, tourism)

Highways maintenance

Leisure facilities Litter and dog waste bins

Museums Open spaces

Parks Playgrounds

Playschemes

Playing fields

Public clocks

Public conveniences

Public seats adjoining highways

Recreation grounds

Sports pitches

Street cleansing

Subsidies for uneconomic post or telecommunications services

Taxi fare concessions

Tourism promotion

Traffic calming

Village greens

Village halls

War memorials