



APSE parks, open spaces and horticultural services seminar

Powers to generate income in parks and greenspaces

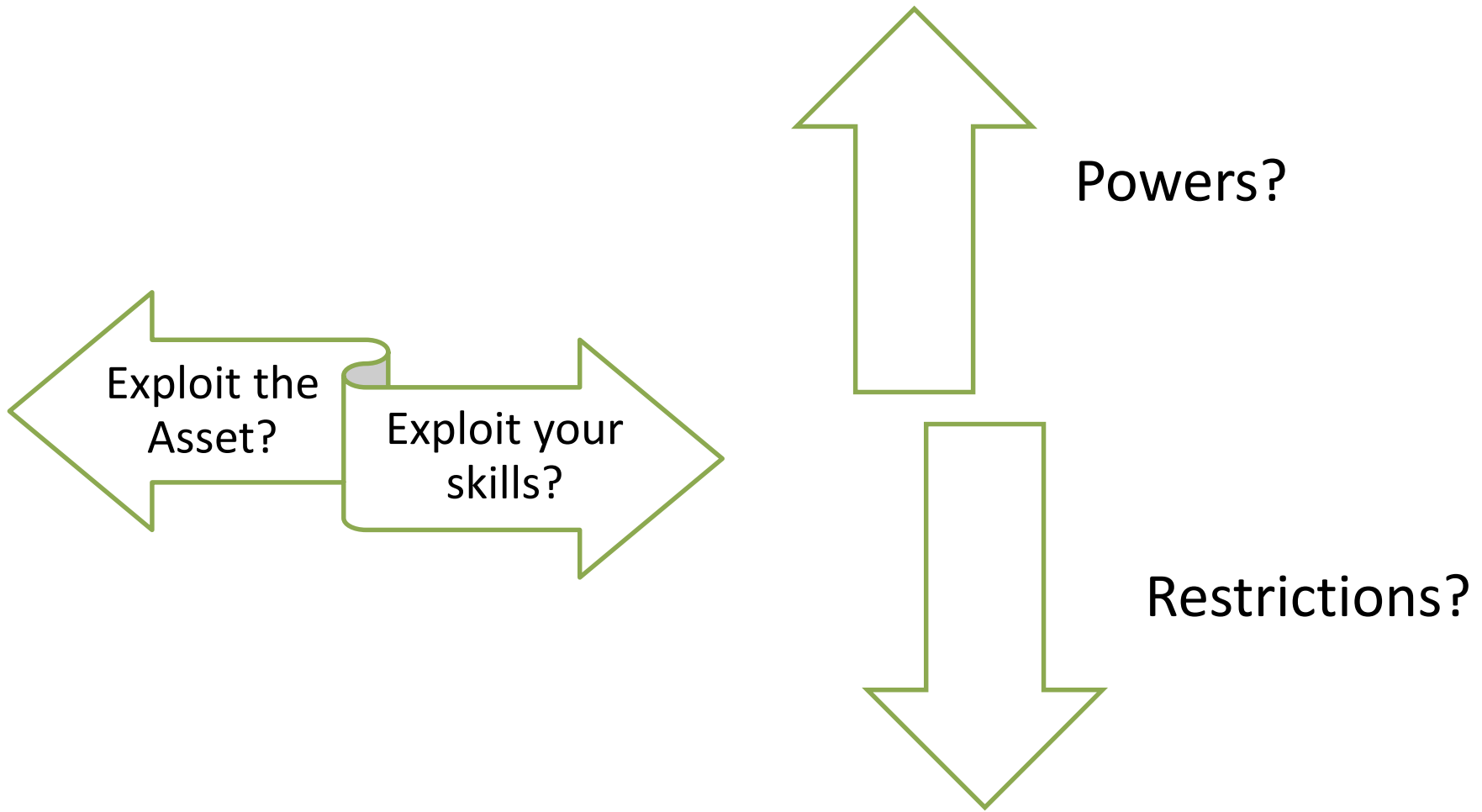
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What do we have in mind?



Local Government (Miscellaneous Provisions) Act 1976

- Power to provide, recreational facilities including
 - Indoor facilities
 - for team games, athletics grounds, swimming pools, tennis courts, cycle tracks, golf courses, bowling greens, riding schools, camp sites and facilities for gliding;
 - for boating and water ski-ing on inland and coastal waters and for fishing in such waters;
 - Premises for the use of clubs or societies having athletic, social or recreational objects;
 - Staff including instructors
 - places at which food, drink and tobacco may be bought from the authority or another person;
- available for use by such persons as the authority thinks fit either without charge or **on payment of such charges** as the authority thinks fit.

Providing Goods and Services to Public Bodies

- Local Authorities (Goods and Services) Act 1970
 - Authority may provide to a **Public Body**:
 - Goods and materials
 - Administrative Professional or Technical Services
 - Use of vehicles plant or apparatus
 - Works of maintenance
 - Such terms as to payment or otherwise as the parties consider appropriate

General Power of Competence (Localism Act)

Power to do anything that individuals may generally do

- Even though in nature extent or otherwise
 - Unlike anything the authority may otherwise do
 - Unlike anything that other public bodies may do
- Individual with full capacity
- Anywhere in the UK or anywhere else
- For a commercial purpose or for a charge or without a charge
- For or otherwise than for the benefit of the Authority or its area or residents

Charging for Services

Local Government Act 2003

- Relevant authority may charge for a service if—
 - authorised, but not required, to provide the service
 - the recipient has agreed to its provision.
 - does not apply if another power or express prohibition to charge for the provision of the service,
- Duty to secure that income from charges does not exceed the cost of provision
 - taking one financial year with another

Localism Act

- power to charge the person for providing a service only if—
 - not one that a statutory provision requires the authority to provide to the person,
 - the person has agreed to its being provided, and
 - the authority does not have power to charge for providing the service.
- taking one financial year with another, the income from charges does not exceed the costs of provision.

Power to Trade

Local Government Act 2003

- Authorised to do for a commercial purpose anything which authorised to do for the purpose of carrying on any of its ordinary functions.
 - Not where required or authorised under ordinary functions
- Power only exercisable through a company
 - part 5 of the Local Government and Housing Act 1989.
 - Prepare business case
 - Recover costs

General Power of Competence

- Limits on doing things for commercial purpose under the General Power
 - Only through Company
 - Not if activity is a duty
 - Subject to
 - pre-commencement limitations
 - post commencement limitations

Open Spaces Act

Hold and administer the open space in trust to allow, and with a view to, the enjoyment thereof by the public as an open space.

- may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them

- Power to appropriate Open Space
 - Give public notice
 - Consider objections
- Free from trust under the Act

Is the park held on charitable trust?

Conveyed by a Deed of Gift dated 25th September 1912.

- "forever in trust for the perpetual use [.....].by the public for purposes of exercise and recreation pursuant to the provisions of the Open Spaces Act 1906"

Registered as a charity with objects

- " The beneficiaries are the general public / mankind. The City of Bradford Metropolitan District Council is currently the sole trustee."

Acting as Trustee

Is the proposal compliant with the objects of the charity?

Is it in the best interests of the charity?

- Important to show that the benefits to the Council are not taken into account
- What will best enable the charity to carry out its purposes?

Who owns the income?

Contact

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