

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Cabinet
2.	Date:	6th July, 2011
3.	Title:	Localism Bill
4.	Directorate:	Chief Executive's; Neighbourhoods & Adult Services; Environment & Development Services

5. Summary

The Localism Bill is the principal Bill to deliver the Government's stated commitment to devolve power to the lowest level, enabling communities to make decisions as part of the big society. An overview of the Bill as introduced was provided in a special Policy Briefing in December 2010. The Bill has completed the Commons stages with a number of amendments and is now subject to scrutiny in the Lords.

To address the potential wide ranging implications for the Council, a cross-Council working group has been established. The group is currently assessing the provisions of the Bill to identify governance; policy; service delivery and community implications. This report provides the findings to date from the group's work and recommended courses of action.

6. Recommendations

That Cabinet:

- a) Considers the "five blocks" of Governance; Communities; Planning; Housing; and Commissioning and Procurement approach to assessing the provisions of the Bill;**
 - b) Considers and discusses the recommendations set out in the body of the report, and provides views and guidance including the role of elected members in their communities;**
 - c) Note the awareness raising and consideration of the implications arising through the Member Development Programme; reporting to Overview and Scrutiny Management Board; and staff sessions;**
 - d) Recommend to Overview and Scrutiny Management Board that Scrutiny Commissions give detailed examination of issues arising in the Localism Bill; and**
 - e) Receive further reports as the Bill passes through Parliament and details of proposed implementation in Rotherham.**
-

7. Proposals and Details

The Localism Bill is a substantial Bill making provisions relevant to the Council across wide range of functions. At the headline level these are:

- Local Government including:
 - General Powers;
 - Governance;
 - Standards; and
 - Pay Accountability.
- E.U. Fines;
- Non Domestic Rates;
- Community Empowerment including:
 - Local Referendums;
 - Council Tax;
 - Community Right to Challenge; and
 - Assets of Community Value.
- Planning including:
 - Plans & Strategies
 - Neighbourhood Planning; and
 - Enforcement.
- Housing including:
 - Allocations & Homelessness;
 - Tenure Reform;
 - Finance;
 - Mobility; and
 - Regulation.

Many of the provisions inter-relate with each other requiring a cross-Council approach to assessing and responding to the Bill. A working group has been established to achieve this, with the Bill divided into five blocks:

- Governance;
- Communities;
- Planning;
- Housing; and
- Commissioning and Procurement.

The assessment and proposed way forward for each of the blocks is set out as follows:

Governance

The governance components are broad ranging for the Council; the Borough; and its communities. These include powers and functions as well as process and proceedings.

General power of competence

The General power of competence will replace the Power of well-being. The stated aim is that it will give the Council the same power to anything that any individual can do, the aim being that council's will be able to take action without first having to

check if there is a legal basis for doing so. Whilst the new power will be broader than the existing power of well-being it is difficult to assess what additional benefits it would bring to the Council, given that the extent of the power of well-being has not prevented the Council from acting on local priorities. There will also be restrictions on the use of the power, both in trading where a company would need to be incorporated; and through the Secretary of States powers to impose limitations. The extent of the limitations are not yet known.

Governance of the Council

Whilst the Bill amends the provisions of the Local Government Act 2000 to include the ability to return to the committee system, unless members are minded to change from the current arrangements, the impact of this part of the Bill in this respect is likely to be minimal. However, the provisions for Elected Mayors bring some fundamental changes. Whilst it is well reported that the government will order Mayoral referendums in 12 areas, the Bill provides that the government can order a referendum in any area. In these circumstances, the Bill provides that the leader becomes "shadow mayor". Should Rotherham move to an elected mayor at any time under the new arrangements, the mayor would also become the chief executive officer of the Council and could be take on responsibilities currently in the domain of other bodies. The Council will continue to be responsible for maintaining a written constitution.

Predetermination

The issue of predetermination has been contentious, especially in relation to regulatory functions such as planning decisions. It has been seen that, for example, the inability for a member of the Planning Committee to express a view or campaign on an issue that will be the subject of a decision by that committee, prevents them from performing the democratic duty of representing the interests of their constituents. The changes in the Bill address this issue. Whilst the changes will be welcome to members who wish to campaign on local issues in the case of planning applications etc, and for that not to be treated as predetermination, the Council could be at risk of allegations that decisions are not being taken on objective grounds.

Standards

The standards arrangements for England will be abolished and there will no longer be the requirement for the Council to have a code of conduct or Standards Committee, however the Council will have a duty to promote and maintain high standards of conduct, and new duties for standards are placed on the head of paid service. It will be for the Council to determine what standards regime it wishes to have and a further report on the options for this will need to be provided, particularly following discussions with Parish Councils. There will need to be awareness across the Council about conflicts of interest and that breaches will become a criminal offence prosecuted through the courts.

Pay accountability

This part of the Bill is designed to bring transparency to pay for chief officers, albeit that the government has also set out requirements separately for pay over £100,000, which they described as excessive. Leaving aside the requirement to produce a policy with the associated time and work, it is unclear what impact this requirement

will have, although the government believes that it will drive down senior levels of pay.

Repeals of Legislation

Among the repeals in “governance”, the repeal of the duty to handle petitions will affect the Council. The duty to handle petitions only came into force last year and required a scheme to be incorporated into the Council’s constitution. RMBC spent time and resources building its new scheme and the view of Scrutiny Members is that it is worth keeping. The Council needs to decide whether to do this.

EU fines

It is not possible at this stage to identify what risk this poses to the Council, but failure to achieve certain targets, where an EU fine is imposed on the government will lead to them passing the fines onto councils.

Non-domestic rates

This part will not directly affect the Council. Suggestions around the return of business rates to councils are not included in this Bill.

Local referendums

There is already provision for councils to hold referendums on local issues. The new provisions would enable petitions to call for referendums or for one or more members to call for one. The threshold of 5% population for a petition makes it unlikely that many would be called for through this route. However, the provision for one or more members makes it more likely that consideration of holding referendums will occur and cases where a referendum will have to be held. As drafted, the Bill does not make referendum results binding, but this may change. The impact could vary on a scale from nothing to quite severe implications.

Council tax

The prospect for the Council of setting two budgets in March and holding a referendum on one of them in May seems remote. What is likely to happen is that the threshold for council tax increase without a referendum, announced by the government at the time of the provisional finance settlement will effectively become a cap. For these provisions to apply to the Council’s 2012/13 budget, the Bill will need to have been enacted and the relevant sections commenced before the provisional local government finance settlement in November / December. It is possible that the Bill will not have been enacted in time, however, existing capping provisions will still apply in this case.

Recommendations

- The Council should assess how the General power of competence will assist in achieving delivery of the priorities set out in the corporate plan.
- Members will wish to take a view on governance arrangements.
- The Council may wish to review the Handing of Petitions Scheme following the repeal of the statutory provision.
- The Council will need to consider what local “Standards” arrangements there should be, including any code of conduct. This should be the subject of a further more detailed report.

Communities

The approach to community empowerment taken in the Bill is very different to the approach we have taken in Rotherham. Locally, our approach has been about partnership and co-operative working, with the Council providing capacity building and support to communities and organisations. The Bill takes a more adversarial approach; the focus is on challenge rather than “partnership”.

Potential impact the Bill could have on the working relationship between the Council, the Voluntary & Community Sector (VCS) and Parish Councils?

Officers regularly work with the communities and Parish Councils to build capacity, skills and knowledge. This could be challenging across the partnership in the current financial climate. We still need to work together in collaboration to ensure communities can effectively influence services e.g. planning and housing. VCS and Parish Councils would need support from us to enable them to take over services and assets and this would be a key role for the Commissioning and Neighbourhood Partnerships teams. Even though the Bill advocates a ‘Challenging’ culture, RMBC still need to play the brokering role to ensure VCS and Parish Councils maximise their potential in terms of the opportunities presented by the Bill.

The Parish Charter will need to be amended to introduce the concept of challenge rather than a ‘partnership’ approach and we will need to consult on the wider content of the Charter given changes proposed elsewhere in the Bill e.g. planning/code of conduct.

The Council may save money on devolving some services to the VCS or a Parish Council which could also result in the service having far more local input/control. However it seems the challenge will trigger a commissioning/procurement process which could end up with the services and assets being run by someone else, potentially from the private sector and less accountable. The withdrawal of funding for capacity building in the VCS will have an impact. However, a government amendment to the Bill will enable the government to provide support to the VCS, but this appears to be only to be in relation to “challenging” rather than co-operation and capacity.

Recommendations

- Community Empowerment will need a ‘One Council Approach’ which means realignment of services to ensure a cohesive and consistent approach.
- Will need to ensure grant funding arrangements with the VCS are fit for purpose in terms of the Localism Bill e.g. capacity building, capacity checks, access to funding etc.
- Consult on and amend the RMBC/Parish Joint Working Charter
- Through the RMBC/Parish Joint Working Group, the Parish Network and Area Assemblies, work with Parish Councils to develop their capacity to maximise the opportunities presented by the Bill.

Planning

The Bill will take forward the commitment to abolish Regional Strategies and place much of planning policy at the local level. The key issues are:

- The Bill's ambition to devolve power to local authorities and communities, including additional control over finances, should enhance the Council's ability to deliver outcomes. However, many of the objectives outlined in the Bill are novel and radical and will require significant consideration to enable them to be properly implemented.
- In addition, the Bill indicates numerous instances where regulations will be required to give greater details to the measures proposed. This provides a great deal of uncertainty about the final form of the measures.

Neighbourhood Planning

There may be financial implications arising from the local planning authority's duties to fund referendums, neighbourhood plans and neighbourhood development orders. The role of the New Homes Bonus and the fees regime for development under the neighbourhood development orders will require further consideration as details emerge.

The Bill sets out an extra role for Local Planning Authorities in supporting neighbourhood planning. Implications of this and what resources may be required (financial and staffing) may become clearer as the Bill progresses. There would also be considerable costs for parish councils or neighbourhood forums for development and adoption of neighbourhood plans. The Government has indicated that they will make support available for this, but this is not yet quantified.

Local communities will also have the power to take forward development in their area without the need to apply for planning permission, subject to meeting certain safeguards and securing 50% support of the community through a referendum. Communities will be able to identify suitable land, sources of finance and secure support for their proposals. There may be future policy implications as the Bill sets out a new relationship between the Council and the community for the purposes of both Planning Policy and Development Management, ie at what level are decisions made on planning applications?

Assets of Community Value

The provisions for "Assets of Community Value" could potentially give rise to conflict where the Council is disposing of property. Whilst the Council may wish to maximise value from asset disposal, the community would seek to buy a redundant asset at "community facility" value. At present Council surplus property is managed by the RMBC "Disposal Policy". However, this is being reviewed and is soon to be replaced by the "Asset Transfer Policy", which is currently in its draft stage.

Core Strategy

The ability to call for a referendum could potentially delay the Council's progress on adopting its LDF Core Strategy. It is conceivable that sufficient numbers could sign a petition resisting Green Belt release. The Council would not be obliged to hold a referendum but not doing so could be seen to be ignoring the community's wishes.

Recommendations

- The Council should continue to progress its LDF Core Strategy to adoption in order to provide a strategic framework for the distribution of new development in the long term. This will provide an adopted plan with which the proposals in

emerging neighbourhood plans should align. Not having an adopted Core Strategy risks being less able to mediate potentially contradictory proposals in neighbourhood plans.

- There will need to be awareness raising of the issues arising from neighbourhood planning and associated issues such as community right to build, in order to clear confusion and misconceptions about the scope of and resourcing of these provisions.

Housing

Homelessness

Homeless duty will be discharged in the private sector through provision of a minimum 12 month, fixed term tenancy. This is likely to increase the number of council properties available for letting to other housing register applicants.

Allocations

Local authorities will be able to set criteria to determine who qualifies for acceptance on to the housing register. Currently, we keep 'open' waiting lists which accept all applicants, regardless of their personal circumstances/need.

Tenure Reform

The 'lifetime' tenancies of existing social housing tenants will continue but there will be an option for Local Authorities to issue minimum 2 year, fixed term tenancies for new lettings.

The decision to issue fixed term tenancies should be informed by housing demand, the need to balance communities and, to a lesser extent, the choices of Rotherham's neighbouring authorities. Landlords will need to publish their policies regarding tenancies.

Following the 'Fairer Future for Social Housing' consultation earlier this year, it is unlikely that RMBC will seek to issue fixed term tenancies in the short term. There are concerns around creating a level of transience on estates which would undermine sustainability.

Succession Rights

The rules on tenancy succession (where somebody who is not named on the tenancy, but has lived in the property for more than 12 months, inherits the tenancy when the tenant dies) are changing; each tenancy will only succeed once. For all new tenancies the spouse or partner will have an automatic legal right to succeed, as long as the named tenant isn't a successor. However, landlords will be able to grant additional succession rights if they choose.

The change to succession rights will result in a greater turn over of tenancies and further opportunities for those on the housing register. It is envisaged that RMBC may see a slight increase in the number of people wishing to hold joint tenancies as a safety net against the 'one succession' rule.

Mobility of Social Housing Tenants

Currently, there is little scope for existing social housing tenants to move to other parts of the country, to be closer to family or for employment reasons, and remain social housing tenants. The Bill seeks to facilitate the movement of social tenants between areas of the country. That said, Rotherham Council subscribes to the Home Swap database which allows their tenants to link with other social housing tenants who are looking to move house.

Local Authorities are to openly publish their policies on tenancy reform.

There is flexibility within the housing elements of the Localism Bill for RMBCV to shape or build on the changes to best suit the needs of the Borough.

Finance – Housing Revenue Account (HRA) Reform

Under the existing subsidy system housing rents are collected centrally and spending on housing functions, such as estate management and repairs and maintenance, is determined by Government and budgets allocated accordingly. Depending on the levels of rent collected and the funds needed to maintain and manage properties, some authorities receive subsidy while others create surpluses.

The proposed self financing system will allow local authorities to retain rental income in exchange for accepting a proportion of the £25b national, housing debt. This debt will be determined by calculating estimated income and expenditure for each local authority and their ability to deliver the housing services needed and manage the debt. The Bill allows for the Secretary of State to revisit this settlement figure in future.

Officers from Neighbourhood Investment Service and 2010 Rotherham Ltd have been meeting regularly over the past year to determine RMBC's priorities for investment in its housing stock over the coming years.

Recommendation

- A 30 year business plan, which will be consulted on, is to be submitted in December 2011 in readiness for self financing on 1 April 2012.

Localism and Procurement

The key issues arising for procurement relate to expressions of interest under the Community Right to Challenge. Whilst an expression of interest may be submitted at any time, the Council would be able to specify periods during which expressions of interest, or expressions of interest in respect of a particular relevant service, may be submitted to the Council.

If the Council accepted the expression of interest it must then carry out a procurement exercise relating to the provision on behalf of the authority of the relevant service to which the expression of interest relates. The Council would be required in considering an expression of interest, to consider whether acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the authority's area.

There is the possibility that the “Community right to challenge” will come to nothing in practice, or certainly as it relates to community organisations bidding for services. In practice, should a challenge be received, it will be difficult for most community organisations to participate in the legalities of the procurement process, probably leading to a private sector body winning the contract. However, the Bill makes provision for the government to provide funding to groups to exercise the right to challenge.

Recommendation

The Council will need to consider the criteria for accepting a challenge. It will also need to identify resources for managing an unknown quantity of challenges and procurement processes.

Communicating awareness and considering the issues arising

The broad ranging implications across the Council has led to the establishment of a cross Council working group to ensure that a consistent approach is taken and the cross-service implications understood. The working group will continue to assess the implications and make recommendations as further detail emerges.

A briefing on the Bill as first presented in the House of Commons was included in a “Special Policy Briefing” in December 2010. Details of amendments at the end of the Commons stages are included in the June 2011 Policy Briefing.

Four member development sessions have been held to date, communicating the provisions of the Bill and allowing members to explore the issues. Directorates are being encouraged to make staff aware of the provisions and implications.

Recommendation

- Reports be made to Overview and Scrutiny Management Board; Cabinet Members’ delegated powers meetings as relevant; and future reports to Cabinet.
- A timeline diagram be developed to assist in communicating the provisions of the Bill and possible implementation details.

8. Finance

There will be financial implications arising from the proposals in the Bill. The most critical is likely to be the proposed arrangements for any increase in Council Tax. In effect, it will be the Secretary of State that determines what the maximum increase will be, unless the Council were prepared to hold a referendum on an alternative amount. There could also be considerable costs if the Council were required to undertake several procurement exercises in accordance with the provisions under “Community right to challenge”.

The will also be cost and functions associated with any moves for referendums and the maintaining of a list of “assets of community value” and associated functions.

9. Risks and Uncertainties

Whilst the Bill sets out detail in respect of many of the provisions, there are significant number of so called “Henry VIII” powers, where the legislation gives the Secretary of State new powers to determine the detail, and to make changes to the detail. This creates an uncertain environment for commencement of the provisions and future implementation. The Bill’s provisions could also bring uncertainty to approaches to partnership working, including the relationship with parish councils.

With regards to Planning Reform, in the short term, there may be a real threat to delivering sufficient housing starts to meet current and future needs, due to the period of uncertainty while the Council revises its Local Development Documents to reflect local priorities. In the longer term, this greater local focus may also slow the pace of housing delivery overall.

Recommendation

The Council will need to give consideration to policy direction and implications for delivering the corporate plan, especially around neighbourhood planning, the role of community forums; area assemblies; and parish councils.

10. Policy and Performance Agenda Implications

The Bill should not be seen in policy isolation from other government legislation that impact on the Council. Whilst the final form of some other Bills remains unknown, the following will have some inter-relationship with “localism”:

- Education Bill;
- Health & Social care Bill;
- Protection of Freedoms Bill;
- Police and Social Responsibility Bill;
- Public Bodies Bill; and
- Welfare Reform Bill.

Other legislation will be required to take forward the “localism” agenda. This will certainly be the case for changes proposed for external audit and inspection including abolition of the Audit Commission.

A Local Government Finance Bill is expected to be introduced in December.

The Government’s policy direction is driven by its statements about the “Big Society”, pushing powers to communities and doing away with big government. This is reinforced by the Government’s statement on public service reform, setting out the objective for non-public providers to run schools, hospitals and council services such as maintaining parks, adult care, special schools and roads maintenance.

Whilst the Bill will not directly prevent the nature of partnership working taken forward by the Council over many years, it could create a dilemma where organisations that the Council is seeking to have a co-operative relationship with choose to take the approach of challenge. Members will need to consider a policy response to this. These provisions in the Bill will create the same issues for the

relationship with any community forums and neighbourhood working and in relation to parish councils.

Details arising from the Localism Bill as part of the broader programme of legislative change are included in the Council's Local Government Reform Resource Library and Action Plan.

11. Background Papers and Consultation

Localism Bill as at 3rd reading in the House of Commons

Contact Name:

Deborah Fellowes, Policy Manager, 22769

Steve Eling, Policy Officer, ext 54419, steve.eling@rotherham.gov.uk

Asim Munir, Community Engagement Officer, ext 22786

Andy Duncan, Strategic Policy Team Leader (Planning) ext 23830

Sarah Currer, Area Partnership Manager, ext 34743

Helen Leadley, Client Officer – Procurement, ext 54528

Wendy Foster, Interim Landlord Relations Manager, 55047