

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Overview and Scrutiny Management Board
2.	Date:	8th June 2012
3.	Title:	Localism Act 2011
4.	Directorate:	Resources

5. Summary

Management Board received a report on 16th December 2011 setting out the final details provided for in the Localism Act 2011 (c. 20) and the proposed courses of action for the Council in moving forward towards commencement and implementation in Rotherham. In a subsequent report to Management Board on the 8th June, Board Members were provided an update, detailing the commencement of the Act to date; issues arising from specific provisions in the Act; and the process of engagement of members in addressing the issues identified and determining ways forward.

This is an amended version of that report, to provide members of the Improving Places Commission with the information that is particularly pertinent to them, to be considered as part of discussions to finalise the commission's work programme for 2012/13.

6. Recommendations

That the Commission considers how it would like to take forward its work programme for 2012/13 in tackling the main issues arising from the Localism Act.

7. Proposals and Details

Commencement of the Act

Following Royal Assent to the Act, the provisions are being commenced over a period of time. Most of the provisions have now been brought into force or dates have been announced for commencement. However, where provisions have been made enabling the government to provide further detail in Regulations, in some cases no Regulations have yet been made. The details of commencement in relation to issues covered by the Improving Places Commission to date are as follows:

Part 5

- Chapter 3 Assets of Community Value – only the sections enabling the making of Regulations and providing advice and assistance have commenced (15th November 2011). No further commencement information.

Part 6

- Chapter 1 Plans and Strategies – most section commenced by 15th January 2012.
- Chapter 2 Community Infrastructure Levy – all section commenced by 15th January 2012.
- Chapter 3 Neighbourhood Planning – all sections commenced 6th April 2012, however, not all provisions of the relevant Schedules have been commenced. Notably, the provisions for conduct of referendums have not commenced. Regulations have been made, but not covering all Regulations provisions.
- Chapter 4 Consultation – only provisions to make supplementary provision have commenced.
- Chapter 5 Enforcement – all section commenced 6th April 2012.
- Chapter 6 Nationally Significant Infrastructure Projects – all sections commenced by 1st April 2012.
- Chapter 7 Other Planning Matter – all sections commenced by 5th January 2012.

Part 7

- Chapter 1 Allocation and Homelessness – partially commenced.
- Chapter 2 Social Housing; Tenure Reform – all sections commenced by 1st April 2012 except requirement to have regard to Tenancy Strategy, which commences on 15th January 2013.
- Chapter 3 Housing Finance – all sections commenced 15th November 2011 except for provision for the abolition of Housing Revenue Account subsidy, which currently has no commencement date.
- Chapter 4 Housing Mobility – all sections commenced 15th January 2012.
- Chapter 5 Regulation of Social Housing – all sections commenced by 1st April 2012.
- Chapter 6 Other Housing Matters – partially commenced on 15th January 2012 in relation to Housing Ombudsman supplementary; 6th April 2012 in relation to Tenancy Deposit Schemes; and 1st April 2012 in relation exemption from HMO licensing.

Part 9 Compensation for Compulsory Acquisition – section commenced 6th April 2012.

Regulations have now been published covering a range of the provisions of the Act, however, not all of the regulation making powers have been used to date. Many of the provisions are subject to transitory arrangements with savings provisions for old legislation.

Taking the Act forward in Rotherham

Given the cross-cutting nature of this Act, the Council has taken a co-ordinated approach to assessing the issues arising whilst the Bill was passing through parliament. This has involved a series of reports and members seminars to highlight the provisions and enable early discussions, including with parish councils and the voluntary & community sector.

Since the passing of the Act, there has continued to be a whole Council approach, facilitating detailed reports and briefings to be made including:

- Detailed reports to Cabinet Members on the issues arising within their portfolio;
- Reports to Standards Committee;
- Report to Cabinet;
- Further reports to Scrutiny;`
- A further programme of members' seminars, this time each one focussing on part of the Act; and
- Information sessions for managers.

An overview of the seminars covered to date, which are relevant to the Improving Places remit, including the issues arising is given below:

Planning

Officers presented an update on Localism and Neighbourhood planning to Planning Board on 15 March. A commitment was given to do further updates to members as more clarity emerges in the shape of new regulations and/or guidance and best practice examples.

We are running a Neighbourhood Planning even with Planning Aid. The date is to be confirmed but it will be held at the Myplace venue. Although this will be useful to get more clarity on Neighbourhood Planning we have to be mindful of the risk that it could generate applications from parishes to prepare a neighbourhood plan that we would not be able to resource. The issue of "who pays for Neighbourhood Planning" is complex and not helped by lack of a clear steer from government. In particular, who pays for any examination and referendum on a neighbourhood plan and how that charge could be recouped - if at all.

The event would allow us to get our message across to parishes that a better approach would be for them to engage with the Local Plan "sites" consultation process to influence the future shape of their communities. This could be a "win win"

outcome that uses existing processes rather than embarking on a new, untried approach.

A further risk is that neighbourhood plans could run counter to our emerging Local Plan strategy and preferred locations for growth. As any parish could commence a neighbourhood plan now, we could end up in a "race to the finish" in terms of completing our LDF to provide the overarching plan that neighbourhood plans have to conform to. Our decisions on when to hold a referendum could be key if this situation occurs.

Ultimately, a corporate decision would be required on priorities if one or more neighbourhood plans are commenced - if we wish (or are required) to support and finance these then we would have to divert resources accordingly. As the pressure would fall on Planning, the obvious risk is delay to the Local Plan.

Asset Management

The Assets of Community Value members seminar took place on 17th of April. It was well attended with nearly 20 members present. Members were particularly interested around the:

- 1) Register of AOCV and when will this be in place.
- 2) Costs associated with maintaining this register.
- 3) Issues around compensation on reduced land sale value.
- 4) Publicity and awareness raising to communities around AOCV.

It was explained that specific regulations have not been introduced yet and are awaiting further detail on all the above. More wider publicity will be rolled out once we have more guidance issued. We informed members that we will arrange a follow up seminar once we have more detail/information. Members agreed to this and said they look forward to the next update.

Community Right to Buy

A Member Briefing was held to provide Members with an introduction and update on the Community Right to Buy and Register of community Assets. The presentation gave a brief introduction on Localism and an overview of the Community Right to Buy. The presentation also provided detail on the Community Right to Buy process including, definition of assets of community value, nomination criteria and nomination requirements, review of a listing, decision and right of appeal, triggering the moratorium, exemptions and exclusions, and compensation.

There were issues arising from the Member briefing. Member raised concerns over the future use of assets, and the mechanisms which would need to be in place to restrict the use to community purposes only. Members provided a scenario that if a community group wanted to redevelop an area of land which was originally purchased for community purposes, what safe guards could be put in place to prevent this. It was highlighted that any member of any community could be a developer who could exploit the process to their advantage and for their own personal gain.

Members also wanted to establish how the Council were going raise awareness of the legislation. There was a general consensus that the promotion of the new legislation to raise awareness should be limited to restrict the number of applications received. Of those applications received, the Council must be clear and explicit from the start of the process; that any community group who intends to purchase an asset of community value will have to compete with the open market at an open market value. This could restrict the number of applications received and provide community groups with other opportunities under the Asset Transfer Policy to occupy rather than purchase land or buildings.

Members were updated on the fact that the Council had made a decision not to nominate their own assets. This decision was agreed by Members

Housing

Member development session was held on Wednesday, 4 April. There was lots of interaction around options and challenges presented by Localism Act;

Members discussed the potential usefulness of flexible tenancies, especially for:

- a) 4/5 bed roomed properties which often become greatly under-occupied as children become adults and leave home, and
- b) adapted properties where changes in the make-up of the household leaves tenants resident who no longer need an adapted property.

Members were aware that families could be moved from adapted properties using current powers but there are no means moving households who under-occupy to more suitably sized accommodation.

In all, temporary tenancies received a fairly lukewarm response.

The option for ending homelessness obligation in private sector was fairly well received, as were changes to succession rights.

The workshop held a productive discussion around the application of locally determined criteria to RMBC's housing register; members liked the inclusive nature of the existing system but understood the associated difficulties and the importance of understanding our neighbouring local authorities' approach to their housing registers.

To put the housing elements of the Localism Act, 2011, in context the workshop also discussed the wider issues of welfare reform and incentivised Right to Buy

8. Finance

There are financial issues arising from the Act including the potential for "new burdens" not previously identified in government impact assessments, and some for provisions of the Act to have been potentially misrepresented. The latter includes the impression given that local authorities have been freed-up to give business rates discounts, whereas state aid rules apply and the requirement to have regard to the

interests of council tax payers, who would effectively have to meet the costs of any discounts given.

The greater potential financial issue at this stage relates to neighbourhood planning and covering the costs of inspection and referendum. Notwithstanding that the Government has made provision to provide financial support for neighbourhood planning, debate during the passage of the Bill specifically covered the issue of the recovery of costs by local authorities and there being no new financial burden. Consequently, the Act enables the government to make Regulations for local authorities to levy charges and the neighbourhood planning impact assessment identifies that local authorities will recover costs from neighbourhood plan promoters. Debate on the Bill suggested that the costs of inspection and referendum would be met by developers when the new development provided for by the Neighbourhood Development Order is commenced. However, no Regulations have been made providing for levying charges, and advice recently received by the Council from civil servants suggests that the Council will have to meet all the costs, an apparent direct contradiction to assurances given to Parliament in the passing of the Bill.

The Department for Communities and Local Government has recently announced £17 million of funding to help local groups with the cost of drawing up new orders which allow communities to grant permission for new building projects. They have said that the £17 million of funding will be available over the next three years and must be used towards the costs of preparing submissions for Community Right to Build Orders.

9. Risks and Uncertainties

Many of the provisions of the Act have now been implemented. The main areas of risk remain those provisions where it is not possible to fully assess impact. These are mainly around planning; community right to challenge; and assets of community value. Some coverage in the media, including government statements may confuse the provisions of this Act with the provisions of the Local Government Finance Bill, currently before parliament, especially around statements covering business rates.

The programme of reporting will mitigate any risks arising from the uncertainties by ensuring that fully detailed reports are made in a timely manner, providing for informed decisions in good time.

10. Policy and Performance Agenda Implications

The Act should not be seen in policy isolation from other government legislation that impact on the Council, especially around changes in health and welfare reform; changes to local government finance and policy development for social care.

The Council's Local Government Reform Implementation Plan provides an overview of this broader government policy agenda, as it affects the Council and the priorities set out in the Corporate Plan.

11. Background Papers and Consultation

Localism Act 2011 (c. 20)

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