

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Audit Committee
2.	Date:	21 st November 2012
3.	Title:	Localism Act Update
4.	Directorate:	Resources

5. Summary

This report provides an update, detailing the commencement of the Act to date; highlighting key issues arising from specific provisions in the Act; and the process of engagement of members in addressing the issues identified and determining ways forward for RMBC.

6. Recommendations

That the Committee consider relevant issues arising for the Council from implementation of the Localiam Act 2011, in particular the following:

- (i) **Council Tax referendum trigger as part of the broader changes to local government finance**
- (ii) **Preferred approach to consider “right to challenge” submissions**
- (iii) **Neighbourhood planning in the context of the Council’s local plan**
- (iv) **Approaches to tenure reform as part of developing the Council’s Tenancy Strategy**
- (v) **Any opportunities arising from “assets of community value”**

7. Proposals and Details

Following Royal Assent to the Act on November 15th 2011, 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.

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 M3 managers, 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 and Rotherham Audit Chairs;
- Report to Cabinet;
- Further reports to Scrutiny (Overview & Scrutiny Management Board);`
- A further programme of members' seminars, this time each one focussing on part of the Act; and
- Information sessions for managers.

The four key parts of the Act that require the attention of the Council at this stage are set out below.

Council Tax

The Act provides that each year, as part of announcing the local government provisional finance settlement the Government will set out principles and calculations that will determine an amount of Council Tax to be raised by each authority, above which the increase will be regarded to be "excessive". The Government will be able to apply different principles to different classes of authority. Where an authority proposes to adopt a budget that would require an "excessive" increase in Council Tax, that increase would require approval in a referendum. Where an "excessive" increase is proposed by a "major precepting authority (Fire; Police); or a local precepting authority (parish council) it would be for the Council as the billing authority to make arrangements for the referendum. In all cases, a reserve budget meeting the Government's principles and calculations would need to be in place to be implemented should a referendum reject an "excessive" increase in Council Tax. Regulations will make provisions about the holding of referendums.

Whilst the Council accepted the government's financial incentive in setting the last two budgets to freeze Council Tax, it is unlikely that any freeze incentives will be offered in future years. For the last budget setting the government announced a 3.5% referendum trigger for the Council and 4% for major precepting authorities. No trigger threshold was set for parish councils increases last year and it is unclear when the government will apply this to parishes.

The latest government announcement is that a threshold of 2% will be set in the coming budget round. It should also be recognised that the proposals for Local Council Tax Reduction Schemes to replace Council Tax Benefit will reduce the Council Tax Base and consequently the yield of any percentage increase in Council Tax.

The Council will need to be aware of the trigger percentage for a referendum set by the government when setting the Council Tax level next year.

Community Right to Challenge

CRC (Community Right to Challenge) provides that people will be able to express an interest in taking over the running of a council service e.g. voluntary and community organisations; charities; parish councils etc. The community right to challenge applies to all relevant services. A relevant service is a service provided by or on behalf of a relevant authority in the exercise of its functions in relation to England, except services which are excluded (listed below).

Those services excluded from the CRC

- Relevant services commissioned in conjunction with one or more health services or commissioned by an NHS body on behalf of the Council are excluded until 1st April 2014.
- A relevant service commissioned or provided by a relevant authority in respect of a named person with complex individual health or social care needs.
- Where relevant children's centre services have been commissioned jointly by a local authority and an NHS body or by the NHS on behalf of the local authority, these services will be excluded from the right temporarily until April 2014.
- Services which are commissioned and managed by individuals or their representatives using direct payments

The Community Right to Challenge provisions of the Localism Act 2011 commenced on 27th June 2012.

RMBC Approach to CRC

The Commissioning and Procurement Team have been preparing a summary from the Forward Procurement Plan/Contracts Register of:

- All existing contracted services,
- The nature of the business commissioned/procured,
- The expiry date of the contract.

This forms the key data set to allow potential suppliers/ providers to express interest in delivering future services for the Council.

The Commissioning and Procurement Team is working with Council Directorates to make sure that the central database is updated regularly with accurate, transparent, and robust information. A checklist is being produced for officers who are

approached with Expressions of Interest from suppliers/providers, to make sure we are complying with the Act.

A published “Future Contracts Opportunities” list and very clear procurement pathways for interested providers will satisfy some of the conditions imposed on Councils by the Act – and will hopefully avoid inappropriate Expressions of Interest’s coming through to the Council, needing responses within mandatory timeframes.

A preferred way forward would be to open up for expressions of interest in a 3 month period rather than to a strict timetable which relates to the commissioning process as this would create serious administrative difficulties.

Some local authorities have adopted a wait and see approach, while others are publishing some information on their procurement timetables with a caveat that they will consider all Expression of Interests as contracts are renewed. We intend to continue to publicise the providers/suppliers with whom we have a formal contracted service with basic information around value of contract, commencement and expiry dates, and we will make sure this is accurate and updated regularly. This will allow potential providers to bid for services as they are renewed.

Development of Neighbourhood Plans

Parishes and neighbourhood forums can use neighbourhood planning to:

- develop a shared vision for their neighbourhood
- set planning policies for the development and use of land
- give planning permission through Neighbourhood Development Orders and Community Right to Build Orders

It should be noted that the purpose of neighbourhood planning is to secure new development through reducing the burdens of the full planning process.

There is a risk 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 Local Plan 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.

The government have announced that over the next three years there will be £30m of funding available to contribute to the costs of communities preparing submissions for Neighbourhood Development Orders. The resources are available for bids from community organisations, not local authorities. Pilot areas have demonstrated that the cost of producing such an Order to be at least £20k.

Community Right to Build

A Community Right to Build Order is a type of neighbourhood plan that allows certain community organisations along with a developer to bring forward smaller-scale development on a specific site, without the need for planning permission. This gives communities the freedom to develop, for instance, small-scale housing and other facilities that they want. In order to bring forward a Community Right to Build Order, members of a community will need to form a formal organisation with the purpose of furthering the interests of the local community. If more than 50 per cent of people in the defined neighbourhood support a Community Right to Build Order in a local referendum, then the local planning authority must grant permission.

The government have announced that over the next three years there will be £17m of funding available to contribute to the costs of communities preparing submissions for Community Right to Build Orders. Under the Localism Act's Community Right to Build, communities can grant planning permission for new buildings they want to see go ahead, sidestepping the normal planning application process.

The neighbourhood planning processes require Plans or Orders to be developed on either parish council boundaries or defined neighbourhood boundaries that would need to be agreed locally. A referendum will need to be held to approve the Development Plans and Orders. A person will be entitled to vote in a referendum if they are a local government elector for the parish or defined neighbourhood, however, where there is a designated business area in the area covered by the proposed Neighbourhood Plan or Order, there will have to be an additional referendum in which business rate payers will be entitled to vote.

Housing

- **Allocations-** we can set our own policies/criteria in respect of who should qualify to go on the Housing Register. i.e. Allocate on Need. RMBC carrying out consultation on this.
- **Tenure Reform-** will provide for flexible tenancies, no more secure tenancies that people are familiar with. The changes will only apply to new tenants. Currently out to consultation locally before deciding whether to implement it

The Council will be required to adopt a new Tenancy Strategy by January 2013 to incorporate the changes. There will also be changes to dealing with homeless people where the homeless duty will have been discharged by offering housing for homeless people in private sector accommodation, this being classed as a "reasonable offer" in future. The changed homelessness provisions commenced on 9th November.

Changes to a new local housing revenue account became effective from April 2012 along with the requirement for a 30 year investment strategy.

Assets of Community Value

We will have to maintain a list of assets of community value, which could be buildings or land. Assets need not belong to the Council, but could be a pub or post office for example. Regulations will set out what qualifies or otherwise for inclusion in the list. Parish councils and community and voluntary organisations with a local connection will be able to nominate land and buildings to be included in the list. Regulations will establish the definition of “local connection”. Owners will be able to appeal against inclusion in the list. Assets will be included on the list for five years and may be removed after that. There is currently no commencement date for these provisions. There is a risk of confusion between these provisions of the Act and local policies relating to asset transfer.

Essentially, this will create a new administrative burden for the Council. The extent of the burden will be commensurate with the number of nominations to the list received, together with the number and complexity of appeals from owners and the number of assets offered for sale for which community organisations would have the right to buy.

These provisions commenced on 21st September. Arrangements are being made to receive nominations of assets to be included on the list. Notwithstanding that there is no requirement for the Council to be pro-active, there may be opportunities to support communities in bringing assets into productive use arising from these new provisions.

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 to 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.

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 Act 2012, especially around statements covering business rates.

The programme of reporting will mitigate any risks arising from the uncertainties by ensuring that fully detailed reports for decision are made in a timely manner. The overall risks arising are monitored as part of the Council's corporate risk register.

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 education, health and welfare reform; and policy development for social care. New legislation introduced in the current session of parliament including the Enterprise and Regulatory Reform Bill and Growth and Infrastructure Bill will further impact on the Council's planning functions. The Local Government Finance Act 2012 (c. 17), which received Royal Assent on 31st October will have major implications for this broader policy agenda.

11. Background Papers and Consultation

Following previous reports to Cabinet and scrutiny, it was resolved that a series of seminars and workshops for members; parish councils and the voluntary and community sector should be held to enable them to consider and comment on specific aspects of the Act. Further workshops will be held covering further developments in the implementation of the provisions of the Act, and reports made as appropriate.

Background papers

Localism Act 2011 (c. 20)

Contact Name:

Matthew Gladstone, Director of Commissioning, Policy and Performance, Resources Directorate, ext 22791, matthew.gladstone@rotherham.gov.uk

RMBC Localism Act Lead Contacts:

Policy:	Steve Eling
Communities & VCS:	Asim Munir
Commissioning:	Helen Leadley
Planning:	Andy Duncan
Housing:	Wendy Foster
Assets:	David Stimpson