

CABINET

19 November 2013

Title: Localism Act 2011: Community Rights	
Report of the Cabinet Member for Crime, Justice and Communities	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Director: Graham Farrant, Chief Executive	
Summary <p>The Localism Act 2011 confirmed new rights and powers for communities and individuals. The Act states that there is a statutory obligation for authorities to provide clear and transparent processes to implement these rights.</p> <p>The Community Right to Challenge provides the right to 'relevant bodies' to challenge how councils deliver their services through a submission of an Expression of Interest to take over the provision of a service. If successful the body will be able to enter the procurement process to compete to win the contract to deliver that service, they are not guaranteed the opportunity to run the service.</p> <p>The Community Right to Bid gives local communities the opportunity to identify land and buildings which they believe to be of social value, interest or wellbeing and place them on a list of Assets of Community Value. When the property comes onto the market the group will be given the chance to organise themselves to bid to buy the item in a competitive market through a moratorium period.</p> <p>This paper presents draft proposals for the processes and governance arrangements.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Approve the policies, procedures and timescales for implementation of the Community Rights to Challenge and Bid as set out in this report and its appendices;(ii) Delegate authority to the Chief Executive, in consultation with the Cabinet Member for Crime, Justice and Communities and the Head of Legal and Democratic Services, to make any necessary amendments to the Council's policy, procedures and timescales in relation to the Community Rights to Challenge and Bid;(iii) Delegate authority to the Chief Executive to make arrangements for decision making (including the appointment of relevant officers to undertake statutory	

functions) in relation to the Community Rights to Challenge and Bid; and

- (iv) Delegate authority to Corporate Directors, in consultation with the respective Portfolio Holders, to make and implement arrangements within their respective departments in relation to the Community Rights to Challenge and Bid.

Reason(s)

To ensure that the Council's statutory obligations are met in line with the Localism Act 2011.

1. Introduction

- 1.1 The Localism Act (the "Act") was enacted in November 2011 with many of its provisions coming into force in April 2012.
- 1.2 The Government grouped key parts of the Act under four headings:
- new freedoms and flexibilities for local government
 - new rights and powers for communities and individuals
 - reform to make the planning system more democratic
 - reform to ensure that decisions about housing are taken locally
- 1.3 Much of the Act is open to local interpretation and therefore provides an opportunity for the Council to consider the desire and ability to respond to the community on the opportunities and powers the Act gives to them. However within the "new rights and powers for communities and individuals" there is a statutory obligation to have in place the correct processes for the Community Right to Challenge and the Community Right to Bid.
- 1.4 This paper presents draft proposals for the processes and governance arrangements, to ensure that the Council's statutory obligations are met. These processes have been created through collaborative working between Thurrock Council and London Borough of Barking and Dagenham to ensure a consistency of process and by referring to good practice of other Councils nationally.

2. Community Right to Challenge

- 2.1 The Localism Act states that community and voluntary bodies, parish councils, charitable trusts and two or more local authority employees have a right to challenge how the Council delivers their services. The Act permits them to submit an Expression of Interest (EoI) to take over the provision of a service which will be assessed by the 'relevant authority' i.e. the Council. It is recommended that initial decision making by CMT in consultation with the relevant portfolio holder and any further decisions in line with the existing Scheme of Delegation and Procurement Rules, in order to meet the statutory obligations in the Localism Act 2011.
- 2.2 If successful the group will be able to enter the procurement process to compete to win the contract to deliver that service, they are not guaranteed the opportunity to run the service.

2.3 To ensure that the Council meets the legal requirements of the Act a procedure needs to be put in place that meets the statutory requirements, and provides a transparent process for the applicants to follow. A draft procedure is diagrammatically outlined in Appendix 1.

2.4 As the process map highlights there are several phases for the Community Right to Challenge.

2.5 **Phase 1 – Validating Eols**

Council collects in the Eols during the appropriate period and identifies whether the proposal meets the basic validity requirements of an application. The legislation sets out clear grounds for refusal of Eols including the service being exempt, the application being received outside of the timescales, inappropriate qualifications / experience to deliver the service or negotiations are already underway.

A briefing will be provided to the Portfolio Holder of the relevant service and if the service is delivered in a specific area, the Ward Councillors will also be informed of the application.

The applicant will be informed whether the Eol is valid and complies with the requirements within 30 days of the closing application window of their success.

Lead Service: Strategy Team

2.6 **Phase 2– Evaluation of Eols**

Within this phase a nominated lead officer from the appropriate service area will convene a group of officers to discuss and evaluate the application in greater detail. This will be known as the Evaluation Team. The representatives and /or advisors should include officers from legal, procurement, commissioning, strategic partners, finance services and community development depending on the proposal in the Expression of Interest.

The lead officer will be responsible for presenting and discussing updates at the Portfolio Holder meetings and where relevant with Ward Councillors.

Lead Service: The service specific to the application, lead officer nominated by their Department Management Team. For example an application to manage a green space within an estate would be led by an officer nominated by the Housing and Environment Management Team.

2.7 **Phase 3 – Decision on Eol**

Potential barriers, areas of concern or opportunities for improved service delivery will be captured in the Evaluation Form to ensure transparency. A final proposal will be put to senior managers for consideration.

Lead Service: Corporate Management Team agree the final decision either “accept”, “accept with modification” or “reject”, in discussion with lead Members.

NB: Once the Council decides to accept an Eol it must proceed to run a procurement exercise for the relevant service. It also means that the applicant can enter the procurement process to run the service. It does not however give them any advantage over other bidders to run the service.

2.8 Outcome Phase

Contact will be made to the organisation submitting their interest to confirm the result as follows:

- **Rejection** - A response letter will be written to the applicant with a clear explanation of why the application has been unsuccessful citing the grounds for rejection that it meets.
- **Approval without Modifications** - The letter approving the Expression of Interest should include an agreed procurement timetable (developed by the Evaluation Team) to inform the applicant of how they can progress to the next stage in the process.
- **Approval with Modifications** - Before this decision can be finalised the Evaluation Team must have, in writing, the applicants signed agreement to the proposed modifications. If the applicant does not accept these modifications then it is an automatic rejection.

In addition the letter should contain a procurement timeline for the next phase. It is likely the modifications will impact the original timetable and so the letter should reflect this change.

- 2.9 Approval will mean that the applicant is able to enter the procurement process to bid to run a service. They will be required to meet the same standards and deadlines as their competitors. The guidance states that if required the Council may offer support or guidance in how to enter the procurement process but the group are not to be given any preferential treatment.

3. Community Right to Bid

- 3.1 The purpose of the Community Right to Bid is to give local communities the opportunity to identify land and buildings which they believe to be of social value, interest or wellbeing and place them on a list of Assets of Community Value. When the item comes onto the market, the group will be given the chance to organise themselves to bid to buy the item in a competitive market during a moratorium period.
- 3.2 Similar to the Community Right to Challenge there is a legal requirement to produce a transparent process and the 'relevant authority' i.e. the Council is responsible for assessing whether the proposal meets the criteria outline in the statutory guidance.

Nomination Process

- 3.3 The Nomination Process decides whether the land or building satisfies the Act's requirements to be put on the asset register. The process is set out in diagrammatic form in Appendix 2.
- 3.4 **Phase 1 – Nomination Received**
Nominations will be received in writing by the Strategy Team. The role of this phase is to acknowledge the nomination within three working days and assess the basic accuracy of the submission to progress to Phase 2.

If the application form is not completed accurately or does not contain all of the required documents to be considered for the Community Assets Register, the Strategy Team will inform the nominee of the inaccuracies.

If the forms are admissible the senior manager responsible for assets will be responsible for the delivery of Phases 2-3b detailed below and in line with statutory requirements.

3.5 **Phase 2 – Nomination Reviewed**

The key tasks for the lead officer to complete in this phase are:

- Issue notices to inform the landowner and legal occupier
- Brief Councillors of the nomination
- Deal with any appeals from the landowner or legal occupier
- Organising the Right to Bid Review Team (including appropriate services)
- Chair the team meetings to review nominations in conjunction with Evaluation Guidance
- Complete the Evaluation Form template.

Right to Bid Review Team members will reach a decision that will be recorded by the asset lead officer. The asset lead officer will refer the recommendation to CMT for final decision.

3.6 **Phase 3a – Negative Outcome of Nomination**

If the nomination was unsuccessful, the Council will issue notice of the outcome to the nominating Community Group, asset owner and occupier and update the unsuccessful nominations Asset List. A briefing note will be supplied to Ward Councillors detailing the reasons for rejection and potential implications.

3.7 **Phase 3b – Positive Outcome of Nomination**

If the nomination was successful, the Council will issue notice of the outcome to the nominating Community Group, asset owner and occupier and update the Assets of Community Value List. A briefing note will be supplied to Ward Councillors.

A memo will be issued to the Land Charges Team to update the Local Land Charges Register. An application will also be referred to Land Registry to impose a restriction in the case of registered land as per the Evaluation Guidance.

Within the Nomination Process it is important to note that the lists of assets, both successful and unsuccessful should be accessible online. There have been no nominations received at this time.

Bidding Process

3.8 Appendix 3 sets out the Bidding Process that the Council, landowner and nominating group are required to do within set timescales when the asset comes on to the market.

3.9 **Phase 1**

Intentions to dispose or sell an asset will be received from the landowner by the Strategy Team in writing. The intention to dispose will be acknowledged within three working days with confirmation of the dates upon which the interim moratorium took

effect and when this period will end. The list of assets of community value will also be updated to reflect these dates.

The senior manager responsible for assets will be responsible for Phases 2 and 3 detailed below and in line with statutory requirements.

3.10 **Phase 2**

The asset lead officer will be responsible for:

- Publicising the proposed sale
- Informing the original nominating group that an intention to dispose has been received, confirming the deadlines and the asset lead officer contact details to submit an Intention to Bid application
- Briefing Councillors of the proposed sale

If the group has failed to make an Expression of Interest within six weeks of the date that the notification of disposal was received by the Council from the landowner then they have missed the opportunity of the Community Right to Bid. The landowner will be notified by the asset lead officer and they are free to dispose of their land in the usual way.

The asset will be exempt from a second moratorium period for 18 months, regardless of future nominations.

3.11 **Phase 3**

If an Intention to Bid application is received by the asset lead officer within the six week interim moratorium period, the Council's administrative lead will notify the landowner and the full 6-month moratorium will apply (unless the landowner disposes to a community group within this period).

After the moratorium period, the owner may sell to whoever they choose and at the highest price.

- 3.12 The Community Right to Bid does not ensure that the nominating group will buy the asset, it simply delays the sale to allow the group to organise themselves to effectively bid for the asset in a competitive market. There is no obligation on the land owner to sell to the nominating group.

Compensation

- 3.13 During the moratorium periods there is a risk that the asset loses value. The Localism Act allows for private property owners, who believe that they have incurred losses as a result of complying with these procedures, to apply for compensation from the local planning authority.
- 3.14 The costs to the Council associated with implementation of the Right to Bid will be covered by Central Government (via New Burdens) during the Spending Review period. After this period, the Council will be required to cover their additional costs from within its own budgets. The risk of compensation is one incurred by all Local Authorities in line with the Community Rights outlined within the Localism Act.

4. Options Appraisal

- 4.1 In developing the processes a number of options were considered including the processes developed by other councils. The proposed processes are based on best practice and statutory requirements.

5. Consultation

- 5.1 The Corporate Management Team (CMT), Legal Team, Finance Team and the Asset Team have all be involved in the development of the proposals within this report.

6. Financial Implications

Prepared and verified by Carl Tomlinson, Finance Group Manager

- 6.1 The report outlines the statutory requirements that the Council has to ensure that it complies with the Localism Act 2011. These requirements will result in additional work for the Council and it is presumed that this work will be managed by existing establishments and that no additional officers will be needed to facilitate these requirements. If additional officers are needed due to more work to the Council than first expected, this will put a financial pressure on the existing budgets.
- 6.2 The report refers to the possible compensation that private property owners can claim if they have incurred a loss as a result of complying with the requirements of the Act. It is presumed to be a minor risk to the Council, but no risk assessment has been carried out to what the potential risks might be and how they should be mitigated.
- 6.3 The report also states that the costs associated with the implementation of the Right to Bid is covered by Central Government during the spending review period concluding 2013/14, but the Council will be responsible after this period. Once a robust risk assessment is carried out as suggested in 6.2 above, the Council will be able to estimate how much budget provision it needs to make in the medium term financial strategy for these costs to the Council post the spending review period.

7. Legal Implications

Prepared and verified by Eldred Taylor-Camara, Legal Group Manager

- 7.1 Legal Services have been consulted and have assisted in the formulation of the proposed policies, procedures and documentation referred to in this report and are satisfied that the procedures proposed do, and once implemented, will, satisfy the provisions of the Localism Act 2011 and other implementing legislation.

8. Other Implications

- 8.1 **Risk Management** – The key risks that have been identified within the Community Right to Challenge and the Community Right to Bid are financial. These risks have been identified and discussed in 6.1, 6.2 and 6.3 of this report.

- 8.2 **Contractual Issues** - The process for the Community Right to Challenge has been developed in line with the procurement forward plan. Rejection will occur if negotiations about a third party are already occurring about a service, the service is already part of the procurement exercise or the service is in the process of being stopped.
- 8.3 **Staffing Issues** - If applications are received then there may be pressures on the Strategy Team and Assets Team within the Council who will be required to administer the applications received. In addition the services impacted by the expressions of interest in the Community Right to Challenge will be required to provide support to the process within short timescales.
- 8.4 **Customer Impact** - Within the statutory guidance provided to review the expressions of interest for both Community Rights the impact to the customer is included. An expression of interest will only progress through the phases outlined if they can clearly demonstrate an increase in meeting customer need and satisfaction or maintaining the current standards at a reduced cost. A perceived negative impact could be a reason for refusal.
- 8.5 **Safeguarding Children** - An expression of interest will only progress through the phases outlined if they can clearly demonstrate that there is not a risk to safeguarding children. In cases where delivery of Children's Services are included evidence of experience, qualifications and meeting statutory standards will be required for progression.
- 8.6 **Health Issues** - Within the Community Rights rejection will occur if the continued integration of a service is critical to the wellbeing of the persons in receipt of the service for example an integrated service with the NHS.
- 8.7 **Crime and Disorder Issues** - Within the Community Rights rejection will occur if the expression is considered frivolous or vexatious for example causing distress without justification. In addition all applicants must evidence that they are a 'relevant body' meeting statutory standards of legitimacy.

Background Papers Used in the Preparation of the Report:

- Localism Act 2011
- A plain English guide to the Localism Act, DCLG November 2011
- Community Right to Challenge: Statutory Guidance, DCLG June 2012
- Assets of Community Value, DCLG September 2011
- Community Right to Bid: Non-statutory advice note for local authorities, DCLG October 2012
- Understanding the Community Right to Bid, Local Government Regulation, Locality, The Social Investment Business, October 2012

List of appendices:

- **Appendix 1** - Community Right to Challenge Process
- **Appendix 2** - Community Right to Bid - Nomination Process
- **Appendix 3** - Community Right to Bid - Bidding Process