

Meeting of the Cabinet – 18th September 2013

Report of the Director of Corporate Resources

Localism Act 2011 – the Community Right to Challenge

Purpose of Report

1. This report proposes a policy position regarding the requirement to respond to the Community Right to Challenge, within a wider context of community involvement and adhering to the principles of a Community Council.

Background

2. The Localism Act 2011 allows relevant community-based bodies the right to challenge local authorities to take over a service currently provided by the local authority. Councils are able to exert control over the process by:
 - Declaring a period of time, outside of which any such expression of interest need not be considered;
 - Exercising judgement over a submitted expression of interest against a number of criteria with which it may reject a bid;
 - For those expressions of interest accepted, by conducting a procurement process designed to rigorously test the quality of bids put forward, and deciding whether or not to award a contract;
3. The Community Right to Challenge applies to all relevant services apart from those specified as exempt (detailed in the Policy & Guidance). A relevant service is a service provided by or on behalf of the Council in the exercise of its functions, except services which are excluded from the right in secondary legislation.
4. The right only applies to the **provision** of services. It does **not** provide for delegation of the functions of a Council. **The responsibility for the function itself remains with the Council**, even after the awarding of a service contract to an external body. Should a new provider fail to deliver the service following the awarding of a contract, the Council retains the responsibility to ensure the service continues to be delivered if there is a statutory duty for the service to be provided. In addition it may wish to ensure continuity for discretionary services whose cessation may impact adversely upon certain groups or communities such as the elderly or vulnerable.

The Wider Context

5. This report proposes a new approach by setting the Council's response to Right to Challenge within a wider context of community collaboration. This

would reflect a strong intention to further develop the relationship between the Council, the communities it serves, and the third sector. This is rooted in a key principle which underpins the new Council Plan, namely establishing Dudley as a “Community Council”.

6. The proposal therefore is to embed Right to Challenge within a suite of options that offer solutions to community issues, thus presenting a set of alternatives that may help community organisations to consider various options including taking on, through Right to Challenge, service delivery.

Right to Challenge – specific points to note

7. The Policy and Guidance proposes an annual time window of 2 months’ duration, specifically April and May of each year, starting from 2014. The logic behind this is to provide time to consider the implications in the budget setting process for that year, and enough time for a procurement exercise to run and for any resultant service change to be implemented from the start of the next financial year.

Communication

8. On receipt of an expression of interest, then sequentially the relevant Cabinet Member, Director, management and staff would be informed and will be kept informed from that point until the final outcome. This will range from a straightforward and early rejection of the expression of interest, through to the outcome of a procurement process if the “challenge” progresses that far.

Service Focus

9. The policy proposes that the Council will not seek to identify or promote any individual services through Right to Challenge unless actively looking for alternative delivery models in respect of a specific service.

Decision making

10. There are two decision stages in the process: firstly, whether or not to accept an expression of interest; and secondly, to award - or not - a contract following a procurement exercise. The Act gives no guidance as to the level of seniority or role of decision-maker nor what constitutes a decision-making body and therefore this is at the discretion of the relevant authority.
11. The first decision will be made using clear criteria provided by the Act (see section 6c of the proposed policy). It is important to gain political involvement and awareness at an early stage in the process, and for this reason it is proposed that this decision is made by Cabinet via a report provided by the Director of Corporate Resources following consideration by the Council's Localism Steering Group.

The decision to award or refuse a contract following a procurement exercise shall be taken by the relevant director or directors (in the event of a cross-directorate service proposal) under whom the service is currently provided in consultation with the relevant Cabinet Member(s).

Finance

12. Government has provided a single “new burdens” grant of modest proportions to support additional work taken on by local authorities in respect of community rights legislation.

Law

13. The Community Right to Challenge is a provision enshrined within the Localism Act 2011.

Equality Impact

14. The report takes into account the Council's Equality and Diversity Policy.

Recommendation

15. It is recommended that Cabinet:
 - Approve the detail of the Policy to deal with Right to Challenge and the wider context it is placed in.
 - Approve the proposed level and stages of decision making set out in this report and the attached Policy and Guidance.



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List of Background Papers

The Draft local Policy and Guidance on the Community Right to Challenge