

LOCALISM ACT – COMMUNITY RIGHT TO CHALLENGE AND COMMUNITY RIGHT TO BID

Submitted by: Business Improvement Manager/Partnerships Officer (Community Development)

Portfolio: Communications, Transformation & Partnerships

Ward(s) affected: All

Purpose of the Report

The purpose of this report is to outline what the Council needs to do in order to comply with the Community Right to Challenge and Community Right to Bid legislation. The report makes a number of proposals in order to enable the Council to meet its obligations under the legislation.

Recommendations

1. That Cabinet agree to adopt the recommendations set out in section 3 and 5 of this report.
2. That Cabinet decide the preferred approach for receipt of 'Expressions of Interest' (EOI) as part of the community right to challenge - either:
 - 2.1 within set timescales set by the authority ((a) para 3.2) or
 - 2.2 as and when an EOI is received ((b) para 3.2)

Reasons

The need to respond to the requirements of the Localism Act which received Royal assent on the 15th November 2011 and was implemented in phases. The Community Right to Challenge was brought into force on the 27th June 2012 and the Community Right to Bid was brought into force on the 21st September 2012.

1. Background

- 1.1 The Localism Act received Royal Assent on the 15th November 2011 and the majority of the Act was introduced in phases. The Community Right to Challenge was brought into force on the 27th June 2012 and the Community Right to Bid was brought into force on the 21st September 2012.

2.0 Community Right to Challenge

Legislation

- 2.1 The Community Right to Challenge (CRTC) allows a relevant body to challenge a local authority by expressing an interest in running a service. A relevant body would comprise of:
 - 2.1.1 a Parish Council, but not limited to services or facilities within its area;
 - 2.1.2 a Voluntary Body – a body, other than a local authority, the activities of which are not carried on for a profit;
 - 2.1.3 a Community Body – a body, other than a local authority, which carries on activities primarily for the benefit of the community;

- 2.1.4 a body or trust established for charitable purposes;
- 2.1.5 two or more employees of the Authority, whether or not they have formed themselves into a body for this purpose; or
- 2.1.6 such other persons or bodies as may be specified by the Secretary of State by regulations. To date, no such regulations have been made.

Note that there is no requirement for a Voluntary or Community Body to have any local connection and any of these bodies can submit an Expression of Interest (EOI) in partnership with any other organisation, including a commercial organisation, or propose to sub-contract the work to a commercial organisation. Providing that this is done, there is no requirement for the relevant body to undertake the majority of, or any particular share of the work.

- 2.2 The Expression of Interest must relate to the provision of, or assisting in the provision of, a “relevant service”, which means any service which is currently provided by or on behalf of the Authority. An Expression of Interest can relate to services such as management and maintenance of playing fields or parks, refuse collection and re-cycling, running a leisure centre, or operation of off-street car parks, internal back office services. Equally, a team of authority staff might consider taking on a back office activity.
- 2.3 There are a number of excluded services exist as part of the CRTC and as such cannot be the subject of an expression of interest, for example a service which includes the exercise of a statutory power which cannot be delegated. So, the setting of Council Tax or the determination of a planning application is not legally capable of being undertaken by anyone other than a local authority, and so cannot be the subject of an expression of interest. A list of further services excluded from the CRTC can be found at Appendix A.
- 2.4 The Council may choose to publish specified periods during which expressions can be submitted in relation to a relevant service and if an expression is submitted outside of the period, the Council may refuse to consider the expression. However, if periods are not specified then expressions of interest may be submitted at any time.
- 2.5 An expression of interest must include specific information in order to initiate a challenge. Once an expression of interest is submitted the Council must determine if it accepts or rejects it and must do so within a set time frame. If the Council rejects an expression of interest it must publish the reasons for its decision. There are a number of grounds for rejection as set out in the Act, as attached at Appendix B.
- 2.6 The Council must specify the maximum period that it will take to notify the relevant body of its decision on an expression of interest and publish details of the specification on the website. The Council must also notify the person making the expression of interest of when they can expect to receive a decision. The notification must be in writing and must be completed within 30 days after the close of any period specified.
- 2.7 If the Council accepts an expression of interest then it must carry out a procurement exercise in which the body submitting the expression can bid alongside others. This means that the body who triggered the procurement exercise may not eventually be a provider of that service. The Council must specify minimum and maximum periods of time that must elapse between the date of its decision to accept an expression of interest and the date on which the procurement exercise will begin. The procurement process will also enable the authority to contrast and compare as part of an evaluation process, value for money from its own internal service delivery as part of any award process.

- 2.8 The Council can also accept an expression of interest with modifications and in doing so it must publish the reasons and carry out a procurement exercise. The option to accept with modification requires the body submitting the expression of interest to agree to the modification. This option is not aimed at enabling wholesale change to an expression of interest, but may enable minor changes to be made to enable the Council to accept it.
- 2.9 The carrying out of a procurement exercise should be appropriate to the nature and value of the contract. So in some cases the Council will have to follow the procedures for advertising, tendering and awarding contracts as set out in the relevant regulations.
- 2.10 It should be noted that the carrying out of a procurement exercise, may result in an outcome where an existing internal service is externalised.

3.0 What does the Council need to do?

Action Required:	Recommendations to Cabinet:
3.1 Develop and implement a process by which the Council can consider and determine any expressions of interest	That the process as outlined at Appendix C is approved.
3.2 Decide if there should be a specific time period for when expressions can be submitted	(a) That the Council either specifies a time period and Cabinet approves the process as outlined at Appendix D. or alternatively (b) accepts 'Expressions of Interest' as and when these arise.
3.3 Decide what information should be included in an expression of interest	The application form for recording expressions of interest as outlined at Appendix E is approved.
3.4 Nominate a key contact that expressions of interest should be submitted to and in what format	That the Business Improvement & Partnerships Officer is the key contact for receiving expressions of interest either through an online application form or paper version.
3.5 Appoint a person/group to accept or reject expressions of interest	The process as outlined at Appendix C.
3.6 Develop mechanisms and timescales for accepting, modifying or rejecting of expressions of interest and the time scale for determination	As outlined at Appendix D.
3.7 Develop a process with specific timescales for undertaking a procurement exercise	This will depend upon the nature of the service that is being challenged but the general process is outlined at Appendix D and follows the Councils existing procurement practices.

4.0 Community Right to Bid

Legislation

- 4.1 The Community Right to Bid (CRTB) is also referred to as the Assets of Community Value. The CRTB requires the Council to maintain a list of assets which are deemed to be of community value, as well as a list of unsuccessful nominations. The aspiration of the CRTB is that it will provide eligible groups with more time to develop their Business Plans and find the finance to buy key assets that are put up for sale.

- 4.2 The CRTB has three main parts:
- Nomination and listing of assets
 - The moratorium period
 - Appeals process

4.3 **Nomination and listing of assets**

The CRTB allows local community groups, voluntary organisations, and parish councils to identify land and buildings such as a local shop or community centre that provide an important service in their community and nominate these for inclusion on the asset of community value register maintained by NULBC. A full list of who can nominate an asset is set out at Appendix F. The asset has to be listed on the register for 5 years or removed if the asset is sold, deemed no longer to have community value or an appeal against the listing has been successful. Following nomination, NULBC has 8 weeks to make a judgement about whether the asset meets the regulations set out in the Act; this is listed at Appendix G. If the nominated asset meets the criteria, then NULBC must list it on a register (listed at Appendix K) informing all affected parties including the Parish or Town Council if appropriate and the relevant LAP. The asset must also be registered on the local land charges register.

4.4 **The Moratorium period**

Once an asset has been listed nothing further will happen until the owner decides to dispose of it, either through a freehold sale, or the grant or assignment of a qualifying lease (i.e. originally granted for at least twenty-five years). Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired. The first part of the window is a 6 week interim period, which will apply to all cases, and allow community interest groups to make a written request to be treated as a potential bidder. If a community group does make such a request during this 6 week period, and it is deemed a valid request, then the full 6 month moratorium will operate. During this period, the owner may investigate or negotiate sales but must not exchange contracts unless it is to the community interest group. If the owner does exchange contracts with someone other than a community group during this period, the sale will be invalid. After the moratorium period, either the 6 weeks if there has been no community interest, or the full 6 months, the owner is free to sell to whomever they choose.

4.5 **Appeals process**

If the owner objects to their property being placed on the register, they have a right to an internal review by the Council and if following the review they are still dissatisfied they then have a right to appeal to an independent Tribunal. Also if the owner (unless the owner is a public sector agency) believes that they have incurred a loss or expense as a result of the delay caused by the moratorium period, they will be able to make a claim for compensation to the Council. The Council will be expected to meet any compensation and (reasonable) legal costs resulting from the appeals process. The Act states that the Listing and Appeals decisions should be taken by different Officers.

5.0 **What does the Council need to do?**

Action Required:	Recommendations to Cabinet:
<p>Nominating and listing of assets</p> <p>5.1 Determine a process to enable Parish/Town Councils, local community and voluntary groups and LAPs to nominate assets</p>	<p>To approve the proposed process which can be found at Appendix H and application form at Appendix I.</p>
<p>5.2 Establish an internal review process</p>	<p>To approve the proposed process which can</p>

should the owner of the nominated asset disagree with the Council's decision that the nomination should be listed	be found at Appendix H.
<p>Decision making</p> <p>5.3 To determine in accordance with Government Regulations whether the asset can be included in a list of assets of community value</p>	The criteria for inclusion are defined in the regulations, so it is essentially a judgement call if the asset is to go on the register or not. Business Improvement and Partnerships will consult with local ward councillors, the internal assets team and others as appropriate and make recommendations to a nominated member of EMT. The nominated member of EMT will then consult with ward councillors on the final decision.
5.4 The Council has to publish a list of both successful and unsuccessful nominations; the Council can either publish one single list or two separate lists. The Council also needs to decide on the frequency of the updates of the register	That the Council publish just one list which can be found at Appendix K, so people wishing to nominate an asset can see quite clearly what has been successfully added and what has been unsuccessful with the reasons for rejection. The list will be published on the Council's webpage's on a monthly basis.
5.5 Publish the list of assets that were unsuccessful including the reasons why the nomination was unsuccessful	As above.
<p>5.6 Selling of assets and appeals process</p> <p>Set up and monitor a moratorium process so that when an asset from the list comes onto the market, community groups have time to register their intent to bid and raise the necessary capital, and prevent the owner from selling the asset during the moratorium period</p>	This process can be found at Appendix J. Once Business Improvement and Partnerships have been informed of the intention to sell the asset, letters will need to be sent to the community group informing them of the proposals and also published around the neighbourhood. The register will be updated to show the intention to sell with the interim, full moratorium end dates and the end date of the protected period.
5.7 Operate a compensation scheme to compensate owners for loss or expense incurred as a result of listing and complying with any procedures of the scheme	The Council will be expected to meet any compensation and (reasonable) legal costs resulting from the appeals process.

6. Issues

- 6.1 There will be a need to raise awareness of the CRTC and CRTB considerations are being given to the following actions:
- 6.1.1 Inclusion of detailed information on the Councils website on the Localism Act with information on all rights,
 - 6.1.2 The drafting of a set of guides will be produced on the Localism Act for staff which will be promoted on the e-voice,
 - 6.1.3 A locality member's forum (possibly through the LAPs) to be held in each locality in February/March 2013 on the CRTB,
 - 6.1.4 Potential engagement with the West Midlands Community Council, Staffordshire Parish Council's Association linked to raising awareness and support within Parishes.

6.1.5 Potential engagement with the Newcastle Voluntary Sector Forum and the LAPs Chair's Group linked to awareness raising and support within the voluntary and community sector, and LAPs.

6.2 Encouraging voluntary participation in service provision under the CRTC: As set out above, once the statutory process is activated, there is no guarantee that the community or voluntary organisation which initiated the process will be successful in the procurement exercise. Indeed, such a local community or voluntary body will normally be at a considerable disadvantage by reason of its smaller size, limited track record of service provision and lack of funds for bid preparation. The formal procurement process also leads to a formality of service contract which may work against a genuine partnership for local service delivery.

If the Newcastle-under-Lyme Borough Council wishes to encourage community involvement in service provision, it may be preferable to encourage direct negotiation with community and voluntary bodies instead of a formal procurement exercise. So, for example, the Authority has the ability to enter an agency arrangement with a Parish Council, or to grant a lease of local community facilities to such a community or voluntary body, and to enter a grant agreement, without having to undertake a competitive procurement. This will only be possible where the grant agreement does no more than cover costs, and where there is no developed commercial market for the services. It must still be satisfied that such an arrangement provides best value for the Authority, but such a voluntary arrangement can avoid the costs to the Authority and to bidders of a formal competitive procurement.

6.3 The acceptance of an expression of interest under the CRTC and subsequent procurement process will require the relevant service area to draft a specification/service outline and identify outcomes/service level expectations. Members of EMT have identified a potential skills shortfall and financial implication in this area that will need to be addressed.

7. Proposal

7.1 That the recommendation set out in sections 3 and 5 of this report are approved.

7.2 That Cabinet indicate the preferred option linked to paragraph 3.2 either:

(a) That the Council specifies a time period and Cabinet approves the process as outlined at Appendix D. or alternatively

(b) accepts 'Expressions of Interest' as and when these arise.

8. Reasons for Solution

8.1 To ensure that the Council meets its duties under the Community Right to Bid and Community Right to Challenge legislation.

9. Outcomes Linked to Corporate Priorities

9.1 The recommendations support the Council's corporate priorities.

9.2 The CRTC and CRTB and the approach adopted in their delivery, clearly supports the priority of becoming a co-operative council which delivers high quality, community driven, services, albeit an EOI under the CRTC may also result in the engagement of a wider supplier base.

10. **Legal and Statutory Implications**

10.1 The report and recommendations respond to requirements of The Localism Act 2011.

11. **Equality Impact Assessment**

11.1 Unless otherwise stated below this proposed decision is not considered to have any adverse implications to and is considered to comply with the Council's equal opportunities/diversity policies.

9. **Financial and Resource Implications**

9.1 The implementation of the actions linked to the recommendations will be financed using existing budgets.

9.2 There will be financial implications linked to the costs of preparing service outlines/specifications and subsequent evaluation and award as part of the CRTC, albeit at the time of drafting this report volumes of EOI cannot be predicted.

10. **Major Risks**

10.1 If the Council fails to comply with legalisation it risks being considered as ineffective and may face enforcement action.

10.2 Risk assessments have been undertaken for both CRTC & CRTB and are available on request.

11. **Key Decision Information**

11.1 This report is classed as a key decision document as there are legal implications linked to non-compliance.

12. **Earlier Cabinet/Committee Resolutions**

12.1 There were no earlier Cabinet or Committee resolutions linked to this report.