

Forest Heath District Council

(This report is a key decision. This report has been subject to appropriate notice of publication under the Council's Access to Information Rules)

Report of the Portfolio Holders for Resources, Governance and Performance and Families and Communities

CABINET

31 JULY 2012

CAB12/017

COMMUNITY RIGHT TO CHALLENGE – PROTOCOLS (Forward Plan Reference: JUL12(B)/15)

Summary and reasons for recommendation(s)

On 27 June 2012, a new duty was placed on local authorities to consider and either accept or reject expressions of interest from community groups who wish to run a council service. If the expressions of interest meet certain criteria laid down in the Localism Act 2011 and subsequent regulations, the local authority must run a procurement exercise. As such, community groups have a new "Community Right to Challenge".

Forest Heath District Council needs to be ready to receive and assess expressions of interest. This paper seeks Cabinet's agreement to the proposed approach to dealing with the new right, both in terms of embedding it in its wider community engagement activities and in terms of ensuring the technical and legal requirements are met. A similar paper is being considered in parallel by St Edmundsbury Borough Council Cabinet following joint working by Officers.

Recommendation(s)

It is recommended that Cabinet:

- 1. Agrees to the proposed overall approach to dealing with the new Community Right to Challenge (Paragraph 6);**
- 2. Agrees to the proposed approach to setting timescales during which expressions of interest can be made for services already contracted out, as shown at Appendix B; and**
- 3. Recommends to Council that the handling of expressions of interest under the Community Right to Challenge should be subject to a scheme of delegations as set out in Appendix C.**

Contact Details

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Title:

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How will the recommendations help us meet our strategic priorities?

1. Dealing effectively with expressions of interest made under the Community Right to Challenge will help the Council in achieving its 2012-16 draft Strategic Plan objective of “supporting stronger, more active communities”. The plan refers specifically to the need to “strengthen and support parish councils and community and voluntary groups across the district” and to “give help to voluntary groups to raise funds and enable them to have an opportunity to run council services”. Opening up the provision of council services to potential new providers also supports the objective of “exploring opportunities to make savings by working in partnership with other organisations”, with the aim of being an “efficient and effective council”.

Wards affected

2. All.

Key issues

How the Community Right to Challenge works (see Appendix A)

3. Community groups, including voluntary and community bodies; charitable bodies; parish councils; and council employees can submit a written expression of interest to the Council to run all or part of a Council service. The Council must contact the group and let them know within 30 days when a final decision will be made.
4. The Council must consider the expression of interest and if it is accepted, should begin a procurement exercise. If it is rejected the Council must let the community group know why and publish the notification on the website. If the Council believes that the expression of interest could be accepted with some modifications, the group will be contacted to discuss whether those modifications are acceptable.
5. If a service is already run under contract by a third party, expressions of interest can be made in specific windows of time prior to a scheduled procurement process starting. If a Council decides not to open such windows or if the service is run by council staff, expressions of interest can be made at any time.
6. Guidance is provided in the regulations with respect to the validity of the expression of interest and potential grounds for rejection. Certain functions are excluded such as the determination of planning applications although the processing of such applications could be included in the Community Right to Challenge. There is currently no provision for appeals against a council’s decision to reject an expression of interest.

Overall approach to the Community Right to Challenge

7. Through the Community Right to Challenge and associated financial support (£11.5m funding for community groups over 3 years), the Government is seeking to empower communities and citizens, while also seeking to encourage greater diversity of service provision and improved innovation and responsiveness.
8. The Community Right to Challenge is therefore in line with the Council's wider strategy and should be approached as part of the ongoing dialogue between members, officers and communities. However, it should not be seen as the only, or even the main way communities can influence the Council. Through discussion and dialogue it should be possible for a community group to express their views and ideas for innovation in service provision and for the Council to take action to change its procurement processes or the way services are provided without the need for recourse to a formal Right to Challenge.
9. Members may wish to consider a learning and development session on the community rights to challenge and bid later in the year to further discuss how they fit into wider community engagement activity.

→ Cabinet are invited to agree to the proposed overall approach to dealing with the new Community Right to Challenge

Timescales for receiving expressions of interest

10. The Localism Act allows Councils to set timeframes within which it will receive expressions of interest from community groups. It is proposed that where council services are currently run directly by the Council and there is no specific intention to change this, no window should be set and any expressions of interest dealt with as they arise.
11. For services where a contract with a third party organisation is already in place, it is proposed that expressions of interest should only be made in specified periods. This is to avoid diverting officers from their service delivery roles outside of the scheduled procurement cycle. It is proposed to set timeframes that would allow time for the points raised by the community groups to be taken account of by the Council when developing the specification for the next round of procurement. The appropriate timeframe will differ depending on the size of the contract and it is therefore proposed that a different timeframe is set for each contract area, as per Appendix B. For leisure services, the timescale that has been set may need to be adjusted to take account of wider decisions around the future of the agreement with Anglia Community Leisure.

→ Cabinet are invited to agree to the proposed approach to setting timescales during which expressions of interest can be made for services already contracted out

Protocols for handling expressions of interest - delegated powers

12. The Localism Act 2011 places new duties on councils to consider expressions of interest (Eols). It is proposed that these functions are delegated to officers in the

majority of cases, but that Members are kept informed and involved where potentially sensitive decisions are taken. A proposed procedure is shown at Appendix A and a scheme of delegation is shown at Appendix C. It provides for:

- Officers to receive expressions of interest (a single point of contact has been given on the website);
- The Portfolio Holder(s) responsible for the service in question and the ward Member(s) in which the community group is located to be informed of relevant expressions of interest that are i) received and ii) accepted;
- The Head of Service responsible for the service in question to assess the expression of interest according to the flow chart attached at Appendix A; to accept it if it meets the relevant criteria; or to reject it if it does not meet the criteria on objective grounds (shown in italics in the flow chart);
- Cabinet to consider proposed rejections of expressions of interest on subjective grounds (shown in normal type on the flow chart).

13. Cabinet are invited to recommend the scheme of delegations to a meeting of full Council on 26 September, in order that the constitution can be amended accordingly.

→ Cabinet are invited to agree the proposed scheme of delegations at Appendix C for submission to the meeting of full Council on 26 September.

Other options considered

14. The new Right came into effect for all local authorities on 27 June 2012. The Council therefore has no option but to implement it. Officers considered different approaches to the issues outlined in paragraphs 6 - 12 above, such as being more or less proactive in promoting the use of the Right; delegating more or less responsibility to officers; and allowing different time periods in which expressions of interest could be submitted. The proposals outlined are considered to offer the best way forward when balancing the interests of promoting community engagement; improving service delivery; ensuring propriety; and carrying out Council decision-making functions in an efficient and effective way.

Community impact

15. The Department for Communities and Local Government assessed the impact of the Community Right to Challenge in January 2011 and found that there were no impacts on diversity and equality or sustainability. The Impact Assessment is available here;

<http://www.communities.gov.uk/documents/localgovernment/pdf/1829777.pdf>

What consultation has been undertaken and what were the outcomes?

16. The Government consulted on the proposed Community Right to Challenge from 4 February – 3 May 2011. The respondents included a wide range of voluntary and community groups as well as local authorities (including Forest Heath District Council). Given the lack of flexibility in the way in which councils can implement the Right it is not proposed that FHDC runs a further consultation exercise. Instead, it is proposed that feedback on the way in which the Council runs the arrangements is

sought through continuous review and dialogue with those taking advantage of the Right.

Financial and resource implications

17. The receipt and assessment of expressions of interest is expected to be able to be managed within existing staff resources. If more expressions of interest are received, there may be a need for increased staff resource in the future. If an expression of interest triggers a procurement exercise, there will be costs to the Council of running the procurement exercise although these may be offset to some extent by savings in the running of the service. At this stage it is difficult to make cost estimates without knowing the extent to which the right is likely to be used in Forest Heath.

Risk management implications

18. The following risks are associated with this issue:

Private sector involvement

19. There has recently been press coverage of the possible use of the Community Right to Challenge to allow private sector companies to trigger procurement exercises by acting “in partnership” with community groups. Councils will not be able to reject expressions of interest simply because one of the partners is a commercial organisation if it otherwise meets the criteria set out in the statutory guidance. Under these circumstances, acceptable expressions of interest would trigger a procurement exercise, in which a range of organisations, including exclusively private sector firms, could compete.

20. It is not clear that this is a situation that would occur frequently, however, due to issues of geographical scale. For this situation to arise, there would either need to be a community group or groups able and willing to submit an expression of interest that covered the whole district (and therefore triggered a procurement exercise large enough to interest large private sector firms), or there would need to be a large private sector firm interested in running council services at a very small scale, which has previously not been the case.

Appeals

21. The Government’s guidance does not make provision for appeals against a Council’s decision to reject an expression of interest. DCLG officials have said that they have “not ruled this out” as a possibility and will “keep it under review”.

Legal/Policy implications

22. The Council has a duty to consider expressions of interest under the Localism Act 2011.

Documents attached

- Appendix A** Process diagram showing how expressions of interest are handled
- Appendix B** Timeframes for receipt of expressions of interest for services already contracted out
- Appendix C** Proposed scheme of delegations

Background papers

DCLG statutory guidance on the Community Right to Challenge

<http://www.communities.gov.uk/documents/localgovernment/pdf/2148165.pdf>