

Localism Act

Briefing note for Scrutiny Task Group to discuss Localism – 3rd September 2013

The purpose of the briefing note is:

- To summarise the key elements of the Localism Act that are of most relevance to Harborough District Council.
- To provide an update on how key elements of the Localism Act have been implemented at Harborough District Council.

It is recommended that:

- Members consider and comment on the information contained in the briefing note.

Introduction

The Localism Act received Royal Assent in November 2011. The act aims to devolve more decision making powers from central government back into the hands of individuals, communities and councils. It covers a wide range of issues related to local public services, with a particularly focus on the general power of competence, community rights, neighbourhood planning and housing. The key measures of the act are grouped under four main headings;

- new freedoms and flexibilities for local government
- new rights and powers for communities and individuals
- reform to make the planning system more democratic and more effective
- reform to ensure decisions about housing are taken locally

This briefing note provides information on the key elements of the Localism Act and updates on how Harborough District Council has addressed them, organised under these four headings.

New Freedoms and Flexibility for Local Government

General Power of Competence

The general power of competence replaced the well-being power from April 2012. It gives local authorities and parish councils the same legal capacity as an individual, meaning that they are free to do anything provided it is not prohibited by law.

This has not removed any duties from local authorities, but aims to encourage confidence, partnership working, innovation and creativity by removing barriers that may have existed before.

HDC's Position:

It is not envisaged that HDC will need to do anything differently.

Abolition of the Standards Board

Through the Localism Act, the Government abolished the Standards Board on 31st March 2012. Instead, Local Authorities are expected to draw up their own codes and it will become a criminal offence for Councillors to deliberately withhold or misrepresent financial interests.

HDC's Position:

The Ethical Governance Committee approved an amended Code of Conduct in March 2013, which is to be considered by Council (date tbc). The aim is to adopt a countywide code.

Clarifying the Rules on pre determination

In parallel with the abolition of the Standards Board, the Act clarifies the rules on 'predetermination' which were developed to ensure that Councillors came to council discussions – on, for example, planning applications, with an open mind. The Government considers that in practice the rules had been interpreted in such a way as to reduce the quality of local debate and stifle valid discussion. The Act clarifies that it is proper for councillors to play an active part in local discussions, and that they should not be liable to legal challenge as a result.

HDC's Position:

The Planning Protocol is being considered as part of the Planning Review.

Governance Structure

The Act introduces a further form of local authority governance in addition to the leader and cabinet mayor and cabinet models. Councils now have the option to adopt a committee system, or to propose an alternative model which can be accepted by the Secretary of State, subject to meeting certain criteria.

HDC's Position:

Alternative governance arrangements remain an option for all local authorities. HDC currently operates a Leader and Executive model.

Scrutiny

The Act consolidates the main part of scrutiny legislation in a single place. It removes prescription about matters which may be referred to scrutiny by councillors who are not members of a scrutiny committee. In addition the Act places scrutiny committees in non unitary district Councils in an equivalent position to those of other authorities by allowing them to hold partners to account.

HDC's Position:

There is no direct impact on Harborough. Scrutiny already operates in a way which is open and works well with partners, holding them to account.

More Local Control over Business Rates

The Localism Act gives Councillors more freedom to offer business rates discounts to help attract firm investments and jobs.

Under the Government's proposal, local authorities are able to retain 50% of the business rates generated locally with the remaining 50% going into a central pot to be distributed as part of "formula grant". The objective of the proposal is to incentivise local authorities to increase economic development activity within their area and thereby generate additional income which can be retained locally.

Pooling of business rates across both administrative boundaries and tiers of local authorities has been encouraged by central government as a means of both mitigating risk and encouraging strategic development across a wider area.

HDC's Position:

- Pooling arrangements for Leicestershire commenced from April 2013. Each month the financial position and forecasting are provided to the HDC Finance Team. This information is then shared with the County Council who collate the information provided by all the districts on a monthly basis in order to ascertain the overall position for the County and Leicester City Council.

Empowering Cities and other Local Areas

The Act enables Ministers to transfer local public functions from Central Government and Quangos to Local Authorities, Combined Authorities and Economic Prosperity Boards, in order to improve accountability or promote economic growth.

HDC's Position:

This is more in consideration of the large unitary authorities (core cities).

New Rights and Powers for Communities

Community Right to Challenge

This part of the Act opens the way for Voluntary and Community organisations, not for profits, charities, parish councils and social enterprises to trigger a procurement process by expressing an interest in providing or assisting in the provision of Council Services. It is also possible for two or more local authority employees to put forward an expression of interest.

On receipt of an application the Council will have to consider or reject the proposal (with possible modifications.) An application may only be rejected on specific grounds. In reaching a decision, the social, economic and environmental implications of the proposal must be taken into consideration. In the case of acceptance, the Council will carry out a normal procurement exercise. The Council can specify particular time periods during which expressions of interest may be submitted.

HDC's Position:

The Community Right to Challenge has been incorporated in the Commissioning Strategy, including:

- Our approach
- Procurement process
- Advice to the public on the process
- Process for considering expressions of interest
- Decision making process

This Strategy was considered and endorsed by the Executive on 20th August 2013 and they recommended that it be approved by Council.

Community Right to Bid (Assets of Community Value)

Parish and Community Councils and local Voluntary and Community organisations are now able to nominate local land or buildings (in public or private ownership) to be included in a published list of community assets of community value maintained by Local Authorities. A property is included where its current primary use furthers the social wellbeing or social interest (which includes cultural, sporting or recreational use) of the local community and where it is realistic to think that this will continue.

When listed assets come up for sale or change of ownership, the Act gives Community groups the time to develop a bid and raise money to bid to buy the asset when it comes on the open market. The regulations bringing into effect the provisions in the Act came into effect on 21st September 2012.

HDC's Position:

A Policy Framework and procedures were approved by the Executive in March 2013. The website has been updated accordingly with advice and nomination forms. Three enquiries have been received but no nominations have been returned. The Assets of Community Value database has been set up and is ready to record the information received.

Council Tax Rises

The Secretary of State will determine a limit for council tax increases which has to be approved by the House of Commons. If an authority proposes to raise taxes above this limit they will have to hold a referendum to get approval for this. The limit for 2013/14 was set at 2%. The Council Tax Freeze Grant has now been extended to 2015/16.

HDC's Position:

HDC agreed to freeze Council Tax for 2013/14 at the 2012/13 level and take the freeze grant of £56,200 – equivalent to a 1% rise.

Pay Policy

The Act requires that Council's will need to publish a statement of their policies on pay. This should include the salaries of senior official's working in local authorities and also the lowest paid employees.

HDC's Position:

The Pay Policy was agreed by the Executive on 14 February 2012 and is due to be refreshed.

Reform of the Planning System

Plans and Strategies

The Act includes:

- The abolition of Regional Spatial Strategies (RSS) and the return of powers over housing and planning matters to Local Authorities
- A new duty to co-operate on planning authorities in relation to planning of sustainable development
- Change to the enforcement regime

Community Infrastructure Levy (CIL)

The Act retains the CIL but includes some provisions for communities to have more control over how the levy is spent and monitored.

HDC's Position:

A decision was made at the Executive Advisory Panel on 12th June 2013 to defer CIL consideration in light of a review of development and infrastructure in the New Local Plan.

Neighbourhood Planning

In summary, the act creates provision for Parish/Town or Neighbourhood forums to:

- Prepare neighbourhood plans that, subject to passing certain tests - such as aligning with existing plans and receiving a majority in a local referendum - will be adopted and become a material consideration.
- Put forward neighbourhood development orders to secure planning permission for development they support.

HDC's Position:

Support and guidance continues to be provided in line with statutory obligations. 11 parishes have expressed interest in completing neighbourhood plans and appropriate support is given by officers. Broughton Astley Neighbourhood Development Plan is currently out to consultation, with the Examination scheduled for September.

All outstanding applications for designation of Neighbourhood Areas have been completed and the grants applied for from Department for Communities and Local Government. The total amount of grants applied for is £25k, with only £5k outstanding in this round.

Community Right to Build

The Act introduces a "Community Right to Build" under which a community organisation can bring forward development proposals, providing they meet minimum criteria and can demonstrate local support through a referendum which will be able to go ahead without requiring a planning application and permission.

Communities wishing to undertake local development can bid for a share of a £17million government funding pot. This funding has recently been opened up to include all community projects, including shops, playground expansions and new housing and is available to all residents outside London until March 2015.

HDC's Position:

No communities have used the Neighbourhood Plan process to exercise 'Right to Build' as yet.

Requirement to consult communities before submitting certain planning applications

The Act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments.

HDC's Position:

This is already an integral part of the HDC planning process. Pre application consultation takes place already on larger applications and is discussed in pre application meetings.

Duty to Cooperate

The “Duty to Cooperate” is the first test that the Inspector will look at during the Hearing on the Local Plan (Core Strategy). If the Council fails to satisfy the Inspector that it has fulfilled its duty, the Core Strategy (Local Plan) cannot proceed any further.

HDC’s Position:

Countywide work is underway to establish a joint framework to fulfil this duty. Political arrangements for Duty to Cooperate are still being considered by Leicestershire authorities.

Enforcement

Enforcement rules are strengthened by the Act to allow local authorities to tackle abuses of the planning system.

Retrospective Planning Permission

- Local Planning Authorities (LPA’s) can decline to determine retrospective planning applications where there is a live enforcement notice on the same site.

HDC’s Position:

It is important to note that this is a power rather than a duty, so LPA’s can determine an application if they wish to do so.

Concealed Breaches

The most significant change is the enforcement provision which provides LPA’s with the power to enforce concealed breaches.

Prosecutions

- There are technical changes in relation to prosecution proceedings in relation to non compliance of enforcement notices.
- Fines are increased for non compliance of a breach of condition notice.

HDC’s Position:

Delegations are currently under review and a report will be considered by the Constitutional Review Committee on 22nd October 2013 in relation to licensing.

Housing Reforms

Social Housing Allocations Reform

The act allows Councils to set criteria for who they will accept onto social housing waiting lists, and to refuse to allow people who do not qualify to join the list. Every local housing authority (in England) needs to prepare an allocation scheme which sets out their priorities for determining housing need (for example, the act says that 'reasonable preference' should be given to homeless people, people occupying unsanitary or overcrowded housing, people who need to move on medical needs and so on). The allocation scheme should also set out the procedure a local housing authority will follow for allocating housing accommodation.

HDC's Position:

The Housing Allocations Policy was approved by HDC on 25th March by the Executive. It is being implemented via a new registration process and adjustments to Leicestershire Choice Based Lettings website, now that all authorities have approved the changes.

Reform of Homelessness Legislation

A key change relating to homelessness is that Councils can fulfil their duty to someone who is homeless and has a 'priority need' (such as having dependents) by offering them a single private rented housing tenancy. Previously, councils were obliged to offer a social housing dwelling unless the tenant asked for a private sector one.

HDC's Position:

The Preventing Homelessness Strategy is in draft and will be submitted to the Executive on 30th September 2013. This Strategy has been discussed at the Housing Forum (June 2013) and Scrutiny Panel (July 2013).

Tenure Reform

Local housing authorities must now prepare a tenancy strategy to guide decisions social landlords working in there area make on:

- The kinds of tenancies they grant
- The circumstances in which they will grant a tenancy of a particular kind
- The length of tenancies
- The circumstances in which they will grant another tenancy when an existing one expires

For new social housing tenants, landlords can now issue fixed-term (flexible) tenancies: social housing no longer comes with a 'tenancy for life.'

HDC's Position:

A Tenancy Strategy was agreed by the Executive on 29th January 2013 and has been sent to the relevant housing providers.

Reform of Council House Finance

The Act Changes the way social housing is funded to pass more power on to a local level by allowing councils to keep the rent they collect and use it locally to maintain their social housing.

HDC's Position:

The Council House Finance changes do not have a direct effect on HDC as the Housing Stock was transferred in 2007.