

**SUBMISSION TO COMMUNITY HOUSING AND ENVIRONMENTAL HEALTH (OVERVIEW
AND SCRUTINY) COMMITTEE**

Date: 26th June 2013

Agenda Item: 8

Contact Officer: Lesley Bovington

Telephone: 01543 308170

**JOINT SUBMISSION BY THE CABINET MEMBER FOR COMMUNITY, HOUSING AND
ENVIRONMENTAL HEALTH AND THE CABINET MEMBER FOR FINANCE,
DEMOCRATIC AND LEGAL SERVICES**

COMMUNITY RIGHT TO CHALLENGE

1. Purpose of Report

- 1.1 To introduce a Community Right to Challenge Scheme, to meet the Council's strategic obligations in compliance with the Localism Act 2011.
- 1.2 The Community Right to Challenge requires relevant authorities (including District Councils) to consider expressions of interest in running Council services which may be received from various bodies specified in legislation, and when expressions of interest are accepted, carry out a procurement exercise.
- 1.3 This item will be considered by Cabinet in September.

2. Background

Who has to comply with the Community Right to Challenge?

- 2.1 The Community Right to Challenge was introduced by the Localism Act 2011. It applies to the following relevant authorities:
 - a) County councils
 - b) District councils
 - c) London borough councils
 - d) Persons and bodies carrying out a function of a public nature specified by the Secretary of State (including Unitary authorities).

Who can apply under the Community Right to Challenge?

- 2.2 The Community Right to Challenge gives 'relevant bodies' the right to submit an expression of interest to run Council services. The Act lists the relevant bodies as:
 - a) A voluntary or community body
 - b) A body of persons or a trust which is established for charitable purposes only
 - c) A parish council
 - d) Two or more employees of the Council
 - e) Any other person or body specified by the Secretary of State by regulations.
- 2.3 Partnerships established between 'relevant bodies' and non-relevant bodies may also apply under the Right.
- 2.4 The District Council is required to consider expressions of interest and, where they are accepted, to carry out a procurement exercise for the service.

Relevant services covered by the Community Right to Challenge

- 2.5 The Right only applies to the provision of services. It does not provide for delegation of statutory functions of the District Council. The responsibility for the function itself remains with the District Council. The statutory guidance about Community Right to Challenge provides this example: the processing of a planning application may be carried out by a third party on behalf of the District Council, but the function of determining planning applications (the decision) may not.
- 2.6 Some services are excluded from the Community Right to Challenge. These are detailed in the guidance, but are primarily services commissioned or received by individuals.
- 2.7 Shared services and services already delivered on behalf of the relevant authority by third parties are included.
- 2.8 Expressions of interest may only be rejected on one or more of the grounds specified in the Regulations. These include:
- a) Submissions that fail to meet the requirements specified in the Act or the Regulations.
 - b) Failure to provide adequate or accurate information.
 - c) Failure to establish suitability to provide or assist in providing the service.
 - d) Services that the Council has decided to stop providing.
 - e) Services that are already subject to a procurement exercise.
 - f) Services concerning which the Council has entered into negotiations with a third party.
 - g) Services that the Council is planning to mutualise.
 - h) Where the Council considers that the expression of interest is frivolous or vexatious.
 - i) Where the Council considers that acceptance of the expression of interest is likely to lead to illegal activity or to a breach of statutory duty.

Submission of Expressions of Interest

- 2.9 The Council may choose to specify periods during which expressions of interest can be submitted. Any such restriction must be published, including on the Council's website. Where the authority chooses not to do so, expressions of interest can be submitted at any time. Failure to set a restricted period may have implications for planning the Council's resource in responding to any such submissions.
- 2.10 It is proposed that the Council sets a one month period annually for submission of expressions of interest of 1st to 30th June, starting from 2014.
- 2.11 It is proposed that the submission is made to the Chief Executive in the first instance, then passed to the Director for Community, Housing and Health for consideration and response, working alongside colleagues from Legal Services, Finance, and the relevant service department, and under advisement by the Procurement Department, Staffordshire County Council.
- 2.12 Expressions of interest must be from a relevant body, must be in writing, and must contain information specified in the regulations, including:
- a) Information about the financial resources of the relevant body submitting the expression of interest.
 - b) Evidence that the applicant relevant body will be capable of providing or assisting in providing the relevant service.
 - c) Sufficient information about the relevant service to identify it and the geographical area to which the expression of interest relates.

- d) Information about the outcomes to be achieved by the applicant relevant body (or the consortium of which it is a part), in particular:
 - how the provision or assistance with provision will promote or improve the social, economic or environmental well-being of the Council's area, and
 - how it will meet the needs of the users of the relevant service.
- e) Where the relevant body consists of two or more employees, details of how it proposes to engage other employees of the Council who are affected by the expression of interest.

2.13 The Council must consider all expressions of interest and may accept them, accept them with modifications or reject them. The guidance sets out that any modifications should be proportionate, and gives suggestions of potential modifications. The Council can only reject expressions of interest on the grounds set out in the regulations.

2.14 It is proposed that delegated powers be given to the Director of Finance working with the Director for Community, Housing & Health to reject expressions of interest that fail to meet the criteria as set out in the statutory guidance.

2.15 If the expression of interest is accepted, the Council must then conduct a procurement exercise for the specified service.

2.16 The Council must notify the applicant within 30 days of the close of the set period for receiving expressions of interest (proposed for 30th June annually, starting from 2014) as to how long it will take to consider the submission and notify them of its decision. A maximum period of 90 days is proposed.

Procurement

2.17 The Council must specify and publish the period between an expression of interest being accepted and a procurement exercise starting. It is proposed that this is set at between 30 days and 6 months from the date on which the expression of interest is accepted, but giving an undertaking to provide more specific timeframes in response to individual applications, depending on the complexity and value of the proposed change in service provision.

2.18 The procurement exercise must be proportionate to the value and nature of the contract that may be awarded as a result. It must include consideration of how the relevant body will promote or improve the economic, social or environmental wellbeing of Lichfield District. The Council must comply with procurement law.

2.19 Expressions of interest for services that are provided on a joint arrangement with other authorities will require particular attention, especially where the set periods for receiving such submissions are not aligned, as each relevant authority has developed their schemes independently.

Summary of Timescales

2.20 Timescale for submission of an expression of interest:

Indicative Timescale	Activity
1 st to 30 th June	Window for submission of expressions of interest
By 30 th July	Notify the applicant as to how long it will take to consider the expression of interest
By 30 th October	Decision on acceptance or rejection made and applicant notified.

2.21 Timescale for procurement, assuming acceptance of the expression of interest:

Indicative Timescale	Activity
Between 30 th November and 30 th April	Procurement exercise starts, including preparation of tender documents

3. Recommendation

- 3.1 To consider and comment on the proposed relating to the Community Right To Challenge, as follows:
- 3.1.1 To accept expressions of interest under the Community Right to Challenge duties annually only between 1st and 30th June, starting in 2014.
 - 3.1.2 To give delegated powers to the Director of Finance working with the Director for Community, Housing & Health to reject expressions of interest that fail to meet the criteria as set out in the statutory guidance.
 - 3.1.3 To notify the applicant within 30 days of the close of the set period for receiving expressions of interest as to how long the Council will take to consider the submission and notify them of its decision.
 - 3.1.4 To set a maximum period of 90 days for consideration of expressions of interest.
 - 3.1.5 To set the period between an expression of interest being accepted and a procurement exercise starting as between 30 days and 6 months, depending on the complexity and value of the proposed change in service provision, with an undertaking to provide more specific timeframes in response to individual submissions.
 - 3.1.6 To publish the guidance document and the decision and notification periods on the Council's website, as required by the legislation.

4. Financial Implications

- 4.1 £17,094 has been received to date (two annual contributions each of £8,547) in Community Rights to Challenge New Burdens Grant from the DCLG.
- 4.2 The organisational response to expressions of interest received under the Community Right to Challenge will require officer time and may carry additional costs, where a procurement exercise ensues. These costs will vary depending on the complexity and value of the proposed change in service provision. Where a procurement exercise follows, there may be requirements for specialist legal, procurement and personnel management advice, as well as support to draft service specifications.
- 4.3 It is difficult to quantify the likely impact on the Council's resources as this is a new Right and it is impossible to gauge the extent to which it may or may not be taken up.

5. Strategic Plan Implications

- 5.1 This is required through the provisions of the Localism Act 2011.
- 5.2 The Community Right To Challenge Scheme supports the following Strategic Plan priorities (A Plan for Lichfield District 2012 – 2016):
- We will support and encourage individuals and groups to take responsibility for shaping and improving their communities through voluntary effort and social action, and support a thriving and diverse community and voluntary sector.
 - We will maximise the Council's performance, innovation and efficiency, so we use our resources well and deliver good quality and better value services.

6. Sustainability and Climate Change Issues

- 6.1 More sustainable service provision may result through reduced organisational overheads and increased community capacity to deliver services. Services may be delivered more locally, although this does not necessarily follow.

7. Human Rights Issues

- 7.1 The Community Right to Challenge supports Article 10 of the Human Rights Act 1998: the right to freedom of expression.

8. Crime and Community Safety Issues

- 8.1 There are no crime and community safety issues in general, but these may apply to particular expressions of interest or procurement exercises, depending on the proposed change in service provision.

9. Risk Management Issues

- 9.1 The risk management issues are as set out below:

Risk	Likelihood/ Impact	Risk Category	Countermeasure	Responsibility
Failure to respond appropriately to expressions of interest to run council services, in accordance with statutory guidance	Low/High	Statutory/ Organisational Capacity	Scheme to be introduced as recommended, pending Cabinet approval (Sept)	Chief Executive
			Delegated authority to be given to Directors to reject expressions of interest that fail to meet the criteria set out in the statutory guidance, pending Cabinet approval (July)	Director for Finance working with the Director for Community, Housing & Health
			Period for accepting expressions of interest to be restricted, to allow for better forecasting of likely demand on officer capacity, pending Cabinet approval (Sept)	Director for Community, Housing & Health

Background Documents:

- Localism Act 2011 - <http://www.legislation.gov.uk/ukpga/2011/20/contents>
- The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 - <http://www.legislation.gov.uk/uksi/2012/1647/contents/made>
- The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 - <http://www.legislation.gov.uk/uksi/2012/1313/contents/made>
- Community Rights website - <http://communityrights.communities.gov.uk/>

Report checked and approved:

Strategic/Corporate Director