Taunton Deane Borough Council

Corporate Governance Committee – 1st March 2011

LOCALISM BILL RESPONSE

Report of the Legal & Democratic Services Manager

(This matter is the responsibility of the Leader of the Council)

1. Executive summary

To establish any response that this Council wishes to make to the Parliamentary Scrutiny Committee looking at various aspects of the Localism Bill.

2. Background

2.1 The Localism Bill was released on the 13th December 2010 and is currently passing through it relevant legislative stages. It is currently with the House of Commons Parliamentary Scrutiny Committee.

2.2 The Bill is extremely varied in the range of areas that it will cover and there will be a range of consultation documents that will be released by government over the coming months which this Council will be able to respond to.

2.3 However there is a window of opportunity for this Council to respond to the Parliamentary Scrutiny Committee with any evidence that it wishes to submit. Attached at Appendix A is a copy of the page from the website giving details of response to the Scrutiny Committee. The deadline for this response is the 10th March 2011.

2.4 Attached at Appendix B are various information sheets that have been provided by officers to assist members with several aspects of the bill in order to respond.

3. Finance comments

3.1 There are no financial implications in this report.

4. Legal comments

4.1 There are no legal implications in this report.

5. Links to corporate aims

5.1 Various proposals in the Bill may have an impact on the Council's corporate aims once implemented.

6. Environmental and community safety implications

6.1 There are no implications for the environment or community safety.

7. Equalities impact

7.1 An impact assessment is not required in respect of this report.

8. Risk management

8.1 There is no implications from a risk management perspective

9. Recommendations

9.1 For the Committee to formalise any response to the Parliamentary Scrutiny Committee that this Council wishes to make.

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Chapter 5: Standards

Clause 14 - Amendments of existing provisions

145. Clause 14, and the Schedule it introduces, abolish the Standards Board regime, which consists of the Standards Board for England, standards committees of local authorities, the jurisdiction of the First Tier Tribunal in relation to local government standards in England and a codes of conduct for councillors. The abolition of the Standards Board for England and revocation of the codes of conduct will take place on a date appointed by the Secretary of State. None of the functions of the Standards Board for England are to be preserved. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities is removed together with the requirement for relevant authorities to establish standards committees. The First Tier Tribunal loses its jurisdiction over councillor conduct issues.

146. The Schedule contains provision for the Secretary of State to make an order regarding the transfer of the assets and liabilities from the Standards Board for England. It also makes provision for the Secretary of State to issue directions in connection with the abolition, including directions about information held by the Standards Board for England and makes provision for the final statement of accounts for the Standards Board for England to be prepared by the Secretary of State.

Clause 15 - Duty to promote and maintain high standards of conduct

147. Clause 15 places a duty on a relevant authority to ensure that members and co-opted members maintain high standards of conduct. It also defines what a ‘co-opted member’ is and what a relevant authority is for the purpose of this Chapter.

Clause 16 - Voluntary codes of conduct

148. Clause 16 provides that a relevant authority may adopt a voluntary code of conduct. If an allegation of a breach of a code is made in writing, the authority must take a decision on whether or not to investigate the allegation and, if it is considered that an investigation is warranted, investigate in any way the authority sees fit.

Clause 17 - Disclosure and registration of members’ interests

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149. Clause 17 provides for the establishment and maintenance of a register of members’ and co-opted members’ interests by the local authority by giving the Secretary of State power to make regulations to specify what interests must be

recorded in that register. The regulations may make provision for restrictions on taking part in the business of the council to be imposed on a member or co-opted member with a registered or declared interest. The regulations may require the register to be available to the public and may make provision about exempting sensitive information from it.

Clause 18 – Offence of breaching regulations under clause 18

150. Clause 18 makes it a criminal offence to fail, without reasonable excuse, to comply with obligations imposed by regulations under clause 17 to register or declare personal interests, or to take part in council business when prevented from so doing by such regulations. The penalty that the magistrates` court may impose upon conviction is a fine of up to £5,000 and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution for the offence may be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but only by or on behalf of the Director of Public Prosecutions.

Clause 19 - Amendment of section 2 following abolition of police authorities

151. Clause 19 removes police authorities from the list of "relevant authorities" in clause 15. The Police Reform and Social Responsibility Bill contains provision for the abolition of police authorities and their replacement with police and crime commissioners. The clause will be commenced when police authorities cease to exist.

Clause 20 – Transitional provision

152. Clause 20 gives the Secretary of State power to make transitional provision in relation to the abolition of the Standards Board regime. Allegations of misconduct can be brought against a member up to the date when section 57A of the Local Government Act 2000 is repealed. The transitional provisions made under this clause will make provision for any such allegations to be transferred from the Standards Board for England to local standards committees, and may make provision for the penalties which can be imposed by those committees, and rights of appeal to be modified.

LOCALISM BILL

PROPOSED CHANGE OF GOVERNANCE PROCEDURES

The Localism bill brings in some changes to local authority governance arrangements. They range from the adoption of mayors to super mayors, allowing flexibility with the leader and cabinet structure to the ability of re-introducing the committee system.

The bill proposes to amend the Local Government Act 2000 to allow a committee system to be a permitted form of governance.

Regulations may specify the functions which cannot be delegated which is currently the situation we have at the moment.

Overview and scrutiny committees will become optional should there be a move to a committee system but will must remain if a council stays with a leader and cabinet model.

It appears from the bill that local authorities will have some flexibility with their leader and cabinet models as they will be able to decide the length of the term of leader which would remove the current provision to have a leader in place for 4 years (strong leader model) however regulations will be required in order to give this detail.

PROCESS FOR CHANGING TO A COMMITTEE SYSTEM

In order to change to a committee system the local authority will need to make a resolution. Once that resolution has been made it will need to be published and there is a process set down for doing this.

No referendum would be required unless we were switching to a mayor and cabinet or if our original change to a leader and cabinet was by way of a referendum.

Once this decision has been made then no further change can be made for 5 years unless ordered to do so by the Secretary of State.

The change then takes effect on the 3rd day after the elections, in the case of a district council which operates all out district elections this means that it won't take effect before 2015.

REMINDER OF THE COMMITTEE SYSTEM

Part 6, Local Government Act 1972

- section 101/2 – council appoints committees
- committees appoint sub-committees

Part 1, Local Government and Housing Act 1989

- sections 13-13 – voting rights of co-opted members
- sections 15-17, and the committees and political groups regulations 1990 – proportionality

No cabinet and Executive

- committee chairs form collective leadership
- leadership more consensual

Policy and Resources Committee

- chair as leader

Managerial Committees –

No mandatory scrutiny

Wider role and apprenticeship for back-benchers

Adaptability for balanced authorities.

Community Empowerment

This part of the Bill forms the main detail of what could be understood to be the localism agenda. Central to this are three key initiatives: local referenda; community right to challenge; and assets of community value.

Local referenda

This measure gives people, councillors and councils the power to instigate a local referenda on 'local matters' and where 5% of the local government electors support such a challenge. 'Local matters' could constitute any decision which would have an impact on the social, economic or environmental well-being of the locality.

There is a duty to hold a referendum if the proper officer is requested by a member for the relevant area and the authority determines that it is appropriate.

There are a number of grounds where an authority can determine that a referendum would not be appropriate and these are where the action to promote or oppose the question is likely to lead to contravention of statute or rule of law, the matter is not a local matter over which the authority has influence or which affects the authority's area, the local authority thinks it is vexatious or abusive or any such other reason that the secretary of state shall determine.

Where a referendum is held, all those eligible to vote will be invited to respond to the referendum question, with any decision made following having to be justified. Critically, because the scope of challenge is so wide, there is a considerable likelihood, that in the early days following enactment of such legislation, there may be substantial requests for referenda!
Therefore the local authority will have to publish guidance for the conduct of the referenda in order to ensure that the public are clear on what they can or cannot request a referendum on.

This is likely to have an impact on resources such as for the Strategy team, Elections, Democratic services and possibly the legal team.

Community Right to Challenge

Community Right to Challenge is intended to offer an alternative means of service provision and delivery which would otherwise have been traditionally undertaken by the local authority. Here an 'expression of interest' may be received from a 'relevant body' (community or voluntary group, charity, parish council, someone else specified by the Sec of State), with an alternative means of service delivery suggested.

If an expression of interest is received the authority must consider it and decide whether to accept or reject it. If the Authority accepts the expression of interest, it must carry out a procurement exercise for the service. It must consider how the procurement exercise might promote or improve the economic, social or environmental well being of the area and it must also be appropriate to the value and nature of the contract that may be awarded. It is possible that the Authority may modify the expression of interest if it believes that it would make it acceptable but the body must agree to this. It should be noted that the duty is to consider the expression of interest not necessarily agree it.

Good governance arrangements must be put in place to deal with this otherwise it could provide a fruitful area of challenge for lawyers and be a burden to the local authority both financially and in staff time.

Assets of Community Value / Community Right to Buy

Local authorities will be required to maintain a list of assets of community value and keep such a list under five yearly review. What constitutes land at community value will be defined by regulations. Where sites are nominated by community groups for inclusion on the list the local authority must be consider the nomination but may not necessarily agree. The Authority must maintain a list of unsuccessful nominations.

If a land owner wishes to dispose of land which is an asset with community value then they must notify the local authority and no disposal can take place until a moratorium period has expired and either the local authority or a community group fails to express an interest in taking on that asset or that the final time limit has expired.

One potential issue relating to this initiative is the not inconsiderable pressure which may be applied by neighbourhoods and pressure groups to seek the protection of Greenfield land such as Killams.

From a resource perspective SW1 will need to be involved in this process as this list will form part of the Council's property portfolio.

Chapter 4: Predetermination

Clause 13 - Prior indications as to view of a matter not to amount to predetermination

Clause 13 clarifies how the common law concept of "predetermination" applies to councillors in England and Wales. Predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision. Decisions made by councillors later judged to have predetermined views have been quashed. The clause makes it clear that if a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.

Clause 13 applies to members of all councils in England and Wales to which there are direct elections - although it applies both to elected and to co-opted members of those councils, and also to members of National Parks Authorities and the Broads Authority.

The section will only apply to decision after it has come into force although there is reference to anything previously done does include things done before the section comes into force.

EG anything which a member may have campaigned on during the elections, ie a single issue member he/she will only be able to vote once this section is brought into force if the matter they are voting on is the matter upon which they campaigned.

However, it is my opinion that the member should still show that they have listened to the debate and show that they have consider what others have said even if they do still vote in the way in which they may have indicated that they would have, so it will be interesting to see how the courts view this if any cases come to court on it.

Localism Bill – Housing

Proposal	Implications/Concerns
Tenure Local authorities and housing associations will be able to let social housing to new tenants on more "flexible" fixed terms rather than lifetime tenancies. This fixed term "flexible" tenancy would be for a minimum length of 2 years. All current social tenants can keep their existing tenancies. Local authorities will still be able to offer lifetime tenancies if they wish. Housing associations will have the option to offer a new fixed term tenancy at either an affordable rent (up to 80% of market rates) or at a social rent. Concern about the length of the fixed term and the impact of these new "flexible" tenancies has already been expressed through the Council's detailed response to the social housing consultation paper – essentially, the view in this response was that 2 years is too short.	In theory, "flexible" tenancies will allow social landlords to manage their homes more effectively, based on a continuing need for social housing. When one of these new "flexible" tenancies comes to an end tenants will have 2 basic options: • remain in social housing if their landlord approves, in their existing home, or in another property, either at a social rent or an (80%) affordable rent • move into private rented housing or purchase a property. In practice, the decision about whether "flexible" tenants will be able to remain in social housing will be down to individual landlords. Where local authorities want to end a "flexible" tenancy at the end of its term and not re-issue it, they will be required to serve notice on the tenant 6 months before it ends. This notice must give the tenant an opportunity to seek an internal review. Even when the landlord's decision to end/not re-issue is upheld on review, the tenant will still have a right to challenge this in the County Court. This could be a costly and lengthy procedure which has been estimated to cost up to £5,000 for every tenant served notice.
Allocations Local authorities will have greater freedom to set their own policies about who qualifies for social housing in their area. The Government will continue to determine which groups	The retention of the "reasonable preference" categories should be welcomed, as should the opportunity for the Council to determine which other categories of applicants should

should have priority for social housing. This will be through the statutory duty on local authorities to give “reasonable preference” to the people who are most vulnerable and who most need social housing. The Government is not proposing to remove “reasonable preference” for people who: are homeless; live in overcrowded or poor housing conditions; need to move on medical or welfare grounds; need to move to avoid hardship to themselves or others. At the moment, under current housing legislation, local authorities are required to operate “open” waiting lists. This means that, with limited exceptions, anyone is eligible to apply for and be allocated social housing.	qualify for social housing. However, tenants have expressed a very strong view that they should have the opportunity to be involved in shaping and agreeing any changes to allocations policies and priorities. Were the Council mindful to change the existing qualifying criteria for social housing, it would be advisable to consult a wide range of local people and local organisations. This consultation should also work out what impact any changes would have on current and prospective housing applicants, as well as whether any decision to restrict access to social housing can be reconciled with equalities responsibilities.
Homelessness Local authorities will be able to meet their homelessness duties with an offer of “suitable” accommodation in private rented housing. Under the present rules, people who are homeless can refuse offers of accommodation in the private sector until such time as social housing becomes available.	Whilst the flexibility this gives the Council to meet short-term housing need is helpful, there is concern about the relatively large sums of money needed to secure a private sector tenancy. This could be a big barrier to many people in housing need and there is only so much money that the Council can commit to supporting rent deposits, rent in advance, and the associated staffing and administrative costs of these schemes. A further concern is whether there is enough good quality, suitable and affordable private rented housing in Taunton Deane to adequately discharge homelessness duties. This is in the light of relatively poor private sector housing conditions (41% fail the decent homes standard), the removal of Government funding for private sector renewal and the potential impact Hinkley C will have. .

Council Housing Finance Councils with housing will be able to keep the rent collected from tenants and use it locally to maintain these homes, under the proposed reform of the Housing Revenue Account (HRA) subsidy system.	The HRA reform should be welcomed as not only as it is more equitable than the current system, but it will also give Councils with housing a more predictable and stable basis to plan for the future.

Localism Bill Summary

Part Five – Planning

Amendments to the planning system are a fundamental part of the Localism and Decentralisation Bill. Whilst a great many of the suggested changes have been much-publicised ahead of the document, there are still some notable exceptions.

Plans and Strategies

As expected, the Bill reiterates the intention to abolish RSS with no suggestion that a higher, formalised tier of strategic planning is needed nor desirable (although the earlier Localism White Paper did allude to LEPs potentially having some informal role). Notwithstanding this commitment, the Bill does assert a new 'duty to co-operate' on local planning authorities. Such a move will require adjoining authorities to engage 'constructively, actively and on an on-going basis' although the degree to which this will be probed in any examination is difficult to second guess.

Interestingly, the duty to co-operate extends beyond Development Plan Documents and other Local Development Documents but also to 'activities which support the planning of development'. Such a statement infers some involvement in planning applications but since there is no third party right of appeal and local authorities themselves will be determining applications themselves in the first instance (unless they are called in by the Sec of State) I am a little unsure what this can mean in practical terms.

Local Development Schemes are important tools in terms of establishing a timetable for plan development although seemingly they will now be brought into effect by local planning authorities themselves rather than through the soon to be defunct Government Offices. Importantly the Sec of State can still however issue directions requiring preparation of a certain DPD. LDS should be kept under review with local planning authorities expected to keep information up-to-date.

The most significant planning related change outlined in the Localism Bill is probably in relation to the preparation and withdrawl of DPDs themselves. An Inspector will now no longer issue a binding report with recommendations on a Plan. This is a massive change since the implication and onus in relation to how onerous a local authority's justification may be reduced as a consequence.

The Inspector will still recommend adoption or non-adoption on the basis of its soundness or otherwise but he/she will now issue recommendations as to how the DPD can be amended to make the document sound. A further more minor but nonetheless notable change is that under the suggested amendments a local

planning authority would be able to withdraw a plan even once it has been submitted for examination.

Monitoring

The Bill still recognises the importance of monitoring particularly in order to demonstrate transparency but seems to offer more flexibility to local authorities about the form and frequency of any submission of monitoring information to the Sec of State. It may be for example that an authority chooses to publish a more lighter touch assessment more frequently than annually as was the case through the Annual Monitoring Report (which will now become the Authority Monitoring Report).

Community Infrastructure Levy

Similarly to the RSS announcement, there are no real surprises here other than further indication that there is an expectation that an element of monies collected through the CIL would be directed to a lower tier of governance below the local authority. More detailed CIL legislation will be published in due course and this will need to make clear the specific provisions of the Levy, what if any alternatives to the approach there may be (e.g. the tariff approach Taunton Deane was previously considering) and the 'share' of any CIL monies being passed down.

Neighbourhood Planning

The Bill introduces a new tier of planning policy: Neighbourhood plans. These plans will sit below the DPDs produced by the local planning authority but will form part of the decision-making process. The Bill itself is a little light on the detail of Neighbourhood Plans but it is anticipated that these documents will be prepared by Parishes, Towns or 'Neighbourhood Forums' and will establish a lower tier of plan-making which outlines how they wish their community to grow.

Neighbourhood Plans will be examined independently but not necessarily by a Planning Inspectorate Inspector. At a course I attended on Neighbourhood Planning in Birmingham it was made very clear by DCLG that anyone suitably qualified could be responsible for scrutinising a plan. In assessing the Plan consideration will be given to:

- The strategic context of the local plan (Core Strategy, LDF documents)
- The National Planning Framework or other national guidance
- The 'new' presumption in favour of sustainable development
- European Directives
- National and International designations
- Neighbouring Neighbourhood Plans.

The reference to the strategic context is particularly important since it confirms that despite being part of the statutory development plans on adoption, Neighbourhood Plans should be in conformity with local plans. This condition is essential in ensuring that Plans do not become 'NIMBYs charters', something that the Government has given assurances on. The implication therefore is that Neighbourhood Plans will be used primarily to enable further development over an above that apportioned to an area in a local plan or in cases where communities wish to prescribe a greater level of detail in the policies which will apply to a neighbourhood.

LPAs will have a duty to provide support to Neighbourhoods preparing Neighbourhood Plans this may include technical and facilitative assistance as well as being obliged to meet the cost of an examination of the Plan and the holding of a referendum to endorse its contents.

New Neighbourhood Development Orders will give communities the opportunity to define particular schemes or types of scheme which will be given automatic planning permission without the need for consent from the local authority. In more complex cases, neighbourhoods will be able to grant outline consent with only the matters of detail to be determined by the local planning authority.

Both Neighbourhood Plans and Neighbourhood Development Orders have potentially huge resource implications for Local Planning Authorities. LPAs will be obliged to assist in the preparation of the documents including footing the bill of any examination and referendum. It is of course impossible to anticipate the level of interest and appetite from local communities to undertake such plans in Taunton Deane.

As and when further detail is available from CLG, it may prove useful that the Council issues some informal guidance to communities so that we can ensure that neighbourhoods fully understand the concept, its application and limitations.

Development Management

The Bill proposes only relatively minor changes in respect of the development management process. In the first instance it places a duty to consult on developers on planning applications. It is unclear as to what the 'hook' to ensure compliance with this provision is, i.e. who judges whether satisfactory consultation has been met and if not, can an application be refused?

A further change relates to pre-determination. Decision-makers will not be considered to have a closed mind on any issue just because they have previously expressed a view on it. This proposed change is made in the context of a recent statement from DCLG:

www.communities.gov.uk/news/corporate/1768609