

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

22 JUNE 2011

Report of the Chief Solicitor & Monitoring Officer

Part 1- Public

Matters for Information

1 LOCALISM BILL

Summary

The purpose of this report is to update Members on the progress of the Localism Bill.

1.1 Introduction

1.1.1 On 12 January 2011 a report was submitted to Cabinet by the Chief Executive to provide information on the publication of the Localism Bill. The report provided a description of each of the 8 parts of the Bill, together with a media release from the Department for Communities and Local Government.

1.1.2 On 17 May 2011 the government tabled 237 amendments to the Localism Bill at report stage. The key amendments relate to the following areas

- The new general power of competence
- Community empowerment, in particular, local referendums
- Planning – the duty to co-operate, neighbourhood planning and pre-application consultation

1.1.3 Further detail on these key amendments is set out in this report.

1.1.4 The second reading of the Bill took place in the House of Lords on 7 June 2011. The Committee stage, which is a line by line examination of the Bill, will commence on 20 June.

1.2 General Power of Competence

1.2.1 The draft general power of competence set out in the Bill will, subject to certain restrictions, give local authorities a broad power to do anything that an individual may do. The Secretary of State will have the power under Clause 5 of the Bill to repeal or amend statutory provisions that prevent or restrict this general power (and also to restrict what local authorities may do with the power).

1.2.2 The government has now introduced an amendment to the power of Secretary of State under Clause 5. Under the new Clause 12, the Secretary of State will not be able to exercise his powers under Clause 5 unless he/ she considers that certain conditions are met. These 5 pre-conditions are

- The effect of the provision is proportionate to the policy objective that it is intended to secure
- A fair balance is struck between the public interest and the interests of any person adversely affected by it
- The provision does not remove any necessary protection
- No person is prevented from exercising any right or freedom which they expected to continue to exercise by the provision
- The provision is not of constitutional significance

1.3 Community Empowerment

1.3.1 Clause 42 of the Bill provides that a principal local authority (which excludes parish councils, police/ fire and rescue authorities) must hold a local referendum if certain conditions are met. The provisions relating to local referendums are quite complicated, but broadly speaking the required conditions for holding a referendum are

- The authority receives a valid petition from local people and determines it is appropriate to hold a local referendum; or
- Upon a request from one or more Members of the authority, the authority resolves to hold a referendum; or
- The Authority passes a resolution

1.3.2 Clause 44 of the Bill enabled the Secretary of State to declare matters to be outside the scope of local referendums. This power has now been removed from the Bill.

1.3.3 A number of new clauses have been inserted into the Bill in relation to community empowerment. These are

- A new clause allowing the government to do anything it considers appropriate for the purpose of giving advice or assistance to a relevant body concerning the community right to challenge – e.g. preparing an expression of interest to a relevant authority, participating in a procurement exercise in response to an expression of interest, or providing a relevant service following a procurement exercise.
- A new clause allowing the government to provide advice and assistance concerning land of community value.

1.4 Planning

1.4.1 A number of the amendments to the Bill affect the proposed reforms to the planning system. The key areas affected by the amendments are the duty to co-operate, neighbourhood planning, and pre-application consultation. Additionally, a new clause has been added so as to make local finance considerations material to the determination of planning applications.

Duty to co-operate

1.4.2 The Bill imposes a duty on local authorities and other public bodies to cooperate with each other in a constructive manner when preparing local plans and development documents and in other activities which support the planning of sustainable development.

1.4.3 A new clause now extends that duty in a number of ways. Firstly, the duty is now extended to include county councils in England that are not planning authorities.

Neighbourhood planning

1.4.4 Under the Bill, communities will be able to request that local authorities make neighbourhood development plans containing policies regarding development in particular neighbourhood areas. For the purposes of these plans, the community shall be represented by a 'qualifying body' comprising either a parish council or an organisation or forum designated as a 'Neighbourhood Forum' by the local authority. It is this body that will be responsible for the majority of the work involved in preparing the plans, with the local authority retaining responsibility for discrete parts of the process.

1.4.5 Additionally, the Bill contains provisions for the making of Neighbourhood Development Orders (on the back of the Neighbourhood Development Plan) enabling development to be permitted in an area without the requirement for an application for planning permission.

1.4.6 The amendments introduced in May relate to the criteria for establishing a 'Neighbourhood Forum'. The key changes are as follows

- Membership can include individuals who work and live in the area, including councillors
- A minimum of 21 individuals are required
- In addition to furthering the well-being of individuals, the purpose of a neighbourhood forum can also be to promote the carrying on of business in the area

Pre-application consultation

1.4.7 The Bill proposes to make it a legal requirement for developers to consult local communities before submitting planning applications for 'large' developments. This has been slightly amended so as to allow for activity carried out before the Bill comes into force to count for the purposes of meeting this requirement.

Financial considerations

- 1.4.8 The government propose to introduce a new clause into the Bill, to make local finance considerations a material consideration when determining applications for planning permission. These will include grants or other financial assistance provided by government (which will therefore include the New Homes Bonus) and sums a relevant authority receives in payment of Community Infrastructure Levy.

1.5 Legal Implications

- 1.5.1 None at this stage.

1.6 Financial and Value for Money Considerations

- 1.6.1 None at this stage.

1.7 Risk Assessment

- 1.7.1 The reforms proposed by the Bill will have resource and other implications for the Council. A full risk and financial assessment will need to be undertaken in due course.

Background papers:

Nil

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Officer

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Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The government has carried out equality impact assessments of the proposals contained in the Bill, which have found that no unintended or disproportionate impact is likely.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.