

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

30 March 2011

Report of the Management Team

Part 1- Public

Executive Non Key Decisions

1 CURRENT GOVERNMENT CONSULTATION DOCUMENTS

This report sets out for retrospective endorsement a response made to a consultation from CLG which ended on 14 March. In addition, Members are also asked to consider draft responses to two consultations from CLG, for which the deadline is 3 May.

1.1 Introduction

- 1.1.1 This report addresses a number of current Government consultation documents and suggests responses for Cabinet to consider.

1.2 Code of Recommended Practice for Local Authorities on Data Transparency

- 1.2.1 On 7 February, the Department for Communities and Local Government published a consultation paper entitled “code of recommended practice for local authorities on data transparency”. The deadline for responses was 14 March, and hence a response was agreed informally with the Leader and Cabinet Member for Finance with the intention that it be retrospectively endorsed at this meeting.
- 1.2.2 The consultation paper can be found at :

<http://www.communities.gov.uk/publications/localgovernment/codepracticeladataconsult>
- 1.2.3 Through the Code, the government seeks to make data generated by authorities available and accessible to the public. It includes the requirements to publish data and the minimum expectations the government has for all those authorities captured by the Code (which currently includes parish councils – see paragraph 1.2.5).
- 1.2.4 The response we have made to the consultation is attached at **[Annex 1]**. Members will note that, in our response, we confirmed that we have no disagreement with the statement that local people should be able to hold local authorities to account. Indeed, Members are aware that, as part of the

transparency agenda, we already publish and make available much of the information described via our website. We have, however, highlighted our concerns regarding 'over-prescription' - i.e. that absolute prescription regarding disclosure of information can be costly, bureaucratic and resource-intensive and can distract authorities from their main purpose which is to provide services at best value.

- 1.2.5 The Code presently includes parish councils within its definition of local authorities and, therefore, as it presently stands, parish councils would be bound by the requirements of the Code. The Director of Finance contacted all parish clerks by email to ensure they were aware of these, potentially, pending requirements. From a few responses she has received, it would seem that parish councils are aware of the consultation and some are responding to it. As we expected, from the feedback we have received, parish councils feel that this would be extremely onerous and could potentially increase the costs their communities have to bear.
- 1.2.6 Members are asked to endorse the response already made to the consultation, at **[Annex 1]**.

1.3 Community Right to Buy

- 1.3.1 On 4 February the Department of Communities and Local Government launched a consultation paper entitled Proposals to Introduce a Community Right to Buy – Assets of Community Value. The statutory framework for this initiative is to be provided through the provisions of the Localism Bill. The deadline for comments on the consultation paper is 3 May. The following paragraphs summarise the proposals, with some brief commentary. The suggested formal response to the consultation questions is set out in **[Annex 2]**.
- 1.3.2 The consultation paper itself can be found at:

<http://www.communities.gov.uk/documents/localgovernment/pdf/1835775.pdf>
- 1.3.3 The Community Right to Buy proposals are part of the Government's drive towards shifting power to local neighbourhoods and purports to put in place opportunities for local communities to secure the purchase of local community assets. Such assets could, for example, be a village shop, the last pub in a community, a community centre or library. The proposals are built upon the assumption that communities may be in a position to fund the purchase of such assets and be able to maintain them in the future under a different business model that might include voluntary, charitable or community share investment.
- 1.3.4 In order to achieve opportunities for Community Right to Buy the consultation document puts forward various mechanisms which are proposed to be managed by local authorities. Initially, community groups will be entitled to nominate public or private assets of community value in their local area to be included by the local authority on its list of such assets which it will have a duty to maintain. The

approach to defining such community groups is purposefully very loosely defined in the consultation document and really only limited to “local connection”.

- 1.3.5 The provisions introduce a “window of opportunity” for community groups, once a listed asset comes up for sale. This is designed to provide time for such groups to organise and fundraise in order to place themselves in a more competitive position against other potential purchasers. Some types of property are excluded by the consultation paper, such as residential property and further regulations are expected to define what constitutes a community asset.
- 1.3.6 Once an asset is nominated, the local authority will consider whether it meets the definition of ‘community value’ (which is also intended to be set out in subsequent regulations). If it does, then the asset must be placed on a list or register. The local authority will then be required to notify the land owner and occupier and make an entry on the Local Land Charges Register. The land owner will have a right of review of the decision to include the asset on the published list and the Localism Bill provides for further regulations to set procedures for such reviews. Bearing in mind this initiative is a marked shift in approach towards individual property rights it might be expected that such challenges to inclusion could be likely. Once included an asset will remain on the published list for five years.
- 1.3.7 If an asset is placed on the published list the owner must inform the local authority of any intent to sell or dispose of the property. The local authority must then notify the nominating group and publicise locally that the asset is on the market. The local authority must also keep a register of unsuccessful nominations together with reasons for their failure to be included.
- 1.3.8 Once a property is included on the list of community assets and there is an intention to dispose, community groups would then have an interim period (suggested as 6 weeks) to express an interest. If such an interest is expressed the proposal is that a full “window of opportunity”, (suggested as six months) will come into play within which the owner will be unable to sell. At the end of the full window the owner would be able to sell to any bidder, there being no obligation to sell to a community group at that stage. There is also a proposed “protected period” following the end of a window of opportunity, when if no sale has taken place the owner is free from any further delay for a period of 18 months.
- 1.3.9 The consultation document envisages that there will be a compensation scheme for landowners in respect of costs directly incurred in complying with these procedures. It is suggested that such compensation would be payable by the local authority, which appears to have no basis or justification in the consultation paper.
- 1.3.10 Subsequent regulations are proposed to set out provisions for the enforcement of the Right to Buy scheme, which is proposed to be focussed on action in the civil courts by nominating groups against an owner who has not complied with

the statutory requirements of the scheme. Ultimately if a case is found in favour of the plaintiff then either compensation could be payable or a sale be deemed void and the transaction set aside.

- 1.3.11 Of course the Right to buy process relates to property only and even if an asset were purchased by a community group there would be no guarantee that the use, such as a shop or pub for example, could be economically sustained. That would be a matter for the purchasing community group to address and support.
- 1.3.12 The consultation document considers at some length options for the detailed operation of the proposed Community Right to Buy scheme. Specific questions are posed in the formal consultation response form and we have attempted to address these in **[Annex 2]**. This is somewhat difficult in a situation where the whole basis of the approach would appear to be of questionable value to communities and potentially a considerable additional burden on local authorities. We have therefore been relatively short in addressing the specific questions.
- 1.3.13 There are a number of overall points to be made about the consultation document as follows:
- The proposals will inevitably raise local expectations without providing any real means for community groups to effectively increase their chances of purchasing local property should they have the desire,
 - The proposals have no effect on the value of property and at the end of a lengthy process market forces will inevitably determine its destiny,
 - The proposals have no effect on or relationship with the planning system so redevelopment or change of use permissions can be gained and effect the value of property. (The consultation document seeks views on whether registered community assets should be protected from demolition by changes to planning legislation. Such a change would need to be very carefully set down in legislation, with it being clear that account must be taken of other material planning considerations should this be imposed and that no further compensation implications would arise for local planning authorities)
 - There are no additional funding opportunities available to local communities to respond to the 'window of opportunity' created,
 - The whole mechanism is an additional resource burden on district councils and the particular proposal to make councils liable for compensation payments is entirely unjustified.

Members are asked to endorse these fundamental points and the detailed response to the consultation questions contained in **[Annex 2]**.

1.4 Community Right to Challenge

- 1.4.1 On 4 February the Department of Communities and Local Government launched a consultation paper entitled “Proposals to introduce a Community Right to Challenge.” The statutory framework for this initiative is to be provided through the provisions of the Localism Bill. The deadline for comments on the consultation paper is 3 May.
- 1.4.2 The suggested formal response to the consultation questions is set out in **[Annex 3]**. The consultation paper itself can be found at:
- <http://www.communities.gov.uk/documents/localgovernment/pdf/1835810.pdf>
- 1.4.3 The essential idea behind the proposals is that what are called Relevant Bodies have a right to trigger a procurement exercise to determine which organisation provides local authority services. Relevant bodies are defined as:
- a voluntary or community body
 - a body of persons or a trust which is established for charitable purposes only
 - a parish council
 - in relation to a relevant authority, two or more employees of that authority
- 1.4.4 It should be noted that the procurement exercise triggered would be an open tender situation and other providers, including the private sector, would be able to submit bids as well as the group that made the Challenge.
- 1.4.5 There will be three options open to an authority that has received an Expression of Interest following a challenge. It can accept, accept with modification (if relevant body agrees) or decline an Expression of Interest. Any form of acceptance will trigger an open procurement exercise.
- 1.4.6 We do have some concerns about the process and these are set out in our suggested response to the consultation at **[Annex 3]**.

1.5 Legal Implications

- 1.5.1 There are none at this stage as this is a consultation and the proposals have yet to be finalised and enacted. In due course, the Council will have new statutory duties to fulfil and further reports and assessments will be required.

1.6 Financial and Value for Money Considerations

- 1.6.1 If the requirements of the transparency agenda are kept to a reasonable level, any additional costs should be minimal. However, the more complex and prescriptive the requirements become, the more likely it is that increased resources will become engaged on the process at the expense of direct service provision.

- 1.6.2 If the proposals of the Community Right to Buy scheme are implemented as proposed it could place resource cost on the Council in running the register of community assets and those processes related to it. Moreover, the compensation aspects proposed could give rise to financial exposure for expenses incurred by owners as a result of delay in disposal, which is an unknown quantity at this stage.
- 1.6.3 The Community Right to Challenge carries potentially substantial additional resource implications if utilised to any significant extent. Procurement exercises are costly and resource intensive, especially if they fall under the EU procurement rules.

1.7 Risk Assessment

- 1.7.1 As mentioned at paragraph 1.6.1, the more complex and prescriptive requirements become for data transparency, the more likely it is that increased resources will become engaged on the process at the expense of direct service provision.
- 1.7.2 The same considerations apply to the two other consultation papers (as set out in paragraphs 1.6.2 and 1.6.3) where the potential for additional resources implications is a risk.

1.8 Equality Impact Assessment

- 1.8.1 See 'Screening for equality impacts' table at end of report

1.9 Policy Considerations

- 1.9.1 Community ; Communications

1.10 Recommendations

- 1.10.1 It is **RECOMMENDED** that:
- 1) The response made, in consultation with the Leader and Cabinet Member for Finance, to the consultation on data transparency be retrospectively endorsed;
 - 2) Members endorse these fundamental points and the detailed response to the consultation in respect of Community Right to Buy and Community Right to Challenge as set out in **Annexes 2 and 3**.

Background papers:

contact: David Hughes

Nil

David Hughes
Chief Executive

for Management Team

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	This is a report highlighting responses to consultation papers
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.