

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

18 February 2010

Report of the Chief Executive

Part 1- Public

Matters For Decision

1 CONSULTATION ON DRAFT STATUTORY GUIDANCE ON THE DUTY TO RESPOND TO PETITIONS

To formulate a response to the above consultation.

1.1 Background

1.1.1 The Local Democracy, Economic Development and Construction Act 2009 places a formal duty on local authorities to respond to petitions. A consultation paper on statutory guidance and secondary legislation to support this duty has recently been published and comments on these are invited by 24 February 2010.

1.2 The Draft Guidance

1.2.1 The 2009 Act requires a local authority to prepare a 'Petition Scheme' setting out how it intends to implement provisions of the Act. That Scheme must be approved by Full Council, published on its website, made public through other means, and kept under regular review. The local authority must comply with its provisions. A model petition scheme is included within the draft guidance. Whilst a number of matters are prescribed in the guidance, Government claims that there is considerable scope for local determination in the way in which a local authority can deal with a petition.

1.3 The Petition Scheme

1.3.1 The key provisions of a Petition Scheme are:

- Anyone living, working or studying in the local authority area (including under 18s) can sign or organise a petition
- Local authorities should make provision for receiving electronic petitions
- Valid petitions must be acknowledged in a time specified in the scheme

- The scheme should specify what action might be taken in response to a petition including: considering the petition at a meeting, holding an inquiry, holding a public meeting or referring the matter to the relevant overview and scrutiny committee
- The scheme can specify thresholds: for example, a petition with a significant level of support (5% of the local population is suggested as a maximum) should trigger a full council debate; lower levels of support might trigger the matter to be considered by the relevant overview and scrutiny committee
- If the initial response of the Council to a petition is considered inadequate, the scheme can specify how petition organisers can request a review of that response.

1.4 Relevant Matters

- 1.4.1 Local authorities are able to reject petitions if they are considered vexatious, abusive or otherwise inappropriate. Matters related to a planning decision, licensing decision, or any matter where there is recourse available by right of appeal are specifically excluded from the duty.
- 1.4.2 The Act states that petitions should primarily relate to the functions of that authority. However, there is little in the draft guidance which deals with suggested processes should a petition be submitted which relates to the function of another authority and therefore is not a matter for that authority to deal with. For example, it is not clear whether that petition should be rejected or whether it should be passed on to the relevant authority to deal with.
- 1.4.3 In two tier areas, ‘top tier’ authorities such as County Councils have a duty also to consider petitions relating to the wider economic, social and environmental well-being of the area in addition to petitions regarding that authority’s functions. This additional duty does not extend to district councils. The draft guidance is silent on how such matters should be dealt with in two-tier areas and some additional advice on this would be useful, for example, by suggesting additional draft text in the model scheme which deals with the matter. For example, if a petition related to a well-being issue focused on a single district rather than a whole county area, it may be more appropriate for that to be considered locally rather than at the county level. Conversely, if a petition is submitted to a district council about a matter not covered by its functions, for example, about a wider well-being matter, the guidance could usefully suggest how such petitions could be referred to the County Council for its formal consideration.

1.5 Conclusions

- 1.5.1 The key duties related to the handling of petitions are set out in the 2009 Act. Whilst the Borough Council previously raised objection to the imposition of a standardised approach to dealing with petitions, there is no further scope to

challenge this in principle. The draft guidance focuses on more detailed aspects of the issue, in particular, prescribing the content of a Petition Scheme. Overall this appears to deal with the issues to be addressed in formulating that scheme in a comprehensive way, apart from further guidance needed on how the process could operate effectively in two-tier areas, as described above.

1.6 Legal Implications

- 1.6.1 The Borough Council's Constitution contains a protocol for responding to consultations.

1.7 Financial and Value for Money Considerations

- 1.7.1 None in this report.

1.8 Risk Assessment

- 1.8.1 None in relation to this consultation. Adoption of a Petition Scheme when the guidance is adopted will need to address any issues of risk related to the handling of petitions.

1.9 Recommendations

- 1.9.1 That the Borough Council's response to the consultation on draft statutory guidance on the duty to respond to petitions be submitted based on the comments set out above.

Background papers:

contact: Mark Raymond

Listening to Communities: Consultation on draft
statutory guidance on the duty to respond to petitions.
December 2009

David Hughes
Chief Executive