

**MAIDSTONE BOROUGH COUNCIL**

**CABINET**

**12 SEPTEMBER 2012**

**REPORT OF THE ASSISTANT DIRECTOR OF ENVIRONMENT  
AND REGULATORY SERVICES**

**Report prepared by David Tibbit**

**1. THE COMMUNITY RIGHT TO CHALLENGE**

1.1 Issue for Decision

1.1.1 To consider the Council's strategy for implementing the legislation regarding the Community Right to Challenge.

1.2 Recommendation of the Assistant Director of Environment & Regulatory Services

1.2.1 That Cabinet agrees a proactive approach to the Community Right to Challenge; and

1.2.2 That Cabinet approves the windows of opportunity when the Council will accept expressions of interest for services from suitable bodies as set out in the draft programme as attached at Appendix A; and

1.2.3 That Cabinet considers identifying a Cabinet Member(s) to champion the development of the agreed approach with the appropriate Head(s) of Service.

1.3 Reasons for Recommendation

Background

1.3.1 The Community Empowerment chapters of the Localism Act offer new opportunities for local people and groups to bid to run services they feel are important to their communities. The Act is a central plank of the Government's drive for decentralisation.

1.3.2 This report focuses on Part Five of the Localism Act – Community Empowerment, in particular the Community Right to Challenge, a summary of which is attached as Appendix B.

- 1.3.3 The Community Right to Challenge gives voluntary or community groups, charitable bodies, parish councils or employees of the local authority the right to submit an expression of interest in running a service currently provided by the local authority. The local authority must consider and respond to the challenge. It can be rejected on specified grounds or, if accepted, will trigger a procurement exercise which will be open to the challenging body as well as other bodies, including private companies.
- 1.3.4 By determining the Council's approach to implementing the provisions of the Act, Cabinet can aid these initiatives and ensure residents and groups are clear as to what is available and the associated processes.

#### Possible Approaches

- 1.3.5 Whilst there are certain obligations within the Act with which the Council must comply, it could decide to take the lead and put in place various structures and frameworks that would help to make the process clearer and more efficient for itself and parish councils, community and voluntary groups and other eligible bodies.
- 1.3.6 There are three possible approaches to how the Council could address the legislation:
- Reactive
  - Proactive
  - Very active

#### Reactive

- 1.3.7 A reactive approach to Community Right to Challenge would see the Council choosing only to respond to challenges as they are received, with each application being considered on its merits.
- 1.3.8 Without a managed programme and a clear framework in which to operate, this approach could result in significant amounts of officer and member time in assessing and discussing the merits or otherwise of each challenge. There would be no control over which challenges came forward, and this could have adverse implications for the Council's own procurement programme.
- 1.3.9 Whilst this approach might enable bolder and more ambitious challenges to come forward, should the challenges be repeatedly rejected due to cost, feasibility, risk etc eligible bodies may become disillusioned.

### Proactive

- 1.3.10 A proactive approach to the Community Right to Challenge would see the Council publishing a comprehensive list of its services which it is willing to consider for challenge, when the window of opportunity will be open, and guidance on how to apply.
- 1.3.11 Such a list would help eligible bodies to prepare for and submit challenges with a more realistic prospect of being successful. A managed approach with clear processes and operating frameworks would reduce officer and member time assessing challenges.
- 1.3.12 The Council's existing partnerships and other contractual commitments will need to be recognised with this approach, as the various services already being delivered in partnership, such as licensing, revenues and benefits, legal services and internal audit, have already increased efficiency and delivered savings.
- 1.3.13 Devolving or disaggregating elements of partnerships could be time consuming and costly, with no guarantee of improved service or lower cost to the Council. However, the programme for inviting expressions of interest for services will include those covered by existing contracts and partnerships in accordance with their contractual end dates.
- 1.3.14 Publication of such a programme will not affect the implementation of the parish service scheme.
- 1.3.15 A proactive approach to the Right to Challenge appears to be the emerging preference for Councils and is the recommended option.
- 1.3.16 A draft programme of services to be published inviting expressions of interest is attached as Appendix A.

### Very Active

- 1.3.17 This approach to the Community Right to Challenge would see the Council taking the proactive approach up to the next level whereby it would actively devolve to community groups and seek out potentially interested groups and invite challenges from them, increasingly leaving a commissioning core at the Council. This would need to be additional to the publication of a programme of services referred to above, in order to retain some of the benefits of that approach.
- 1.3.18 This approach could lead to problems arising from managing an extensive range and quantity of services including deterioration and variation in quality and higher overall costs.

1.4 Alternative Action and why not Recommended

1.4.1 The alternative actions are explored in the main body of the report. Taking no action is not an option.

1.5 Impact on Corporate Objectives

1.5.1 A successful outcome to the Right to Challenge will contribute to the residents of Maidstone having value for money services with which they are satisfied, with the Council delivering fewer services directly and commissioning more services through parish councils, voluntary and community groups and social enterprise.

1.6 Risk Management

1.6.1 The risks associated with each approach are outlined in the main body of the report.

1.6.2 It is difficult at this stage to assess the community's response to the legislation and its effect on the Council's operations. A proactive approach as outlined above would allow for better management of the risks of service failure, reputational damage and additional costs.

1.6.3 The acceptance of a challenge from an eligible body results in a procurement exercise, which is then open to a wide range of public and private bodies, who do not need to have local connections. There is a risk that the challenging body will not be successful in its bid. Whilst it would be unfair, and open to challenge, to positively discriminate in favour of challenging bodies, the resulting procurement exercises should ensure they are easily accessible to and understandable by local bodies, and incorporate an appropriate element of local social value.

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	X
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	X
6.	Community Safety	

- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

X

- 1.7.2 The financial implications will depend on the extent of the services devolved to eligible bodies. The degree of disaggregation and transfer may result in greater overall cost to the Council.
- 1.7.3 There are two aspects to staff implications. Firstly, management of whichever approach is agreed will require staff resources, particularly in procurement, legal services and IT. It would be prudent to allocate £40,000 over the next three years to support this work, which could be met from balances. Secondly, transfer of services could result in TUPE transfers of staff or redundancies.
- 1.7.4 The Council has set aside £100,000 to support local organisations, some of which could be used to assist interested groups in preparing bids associated with the Right to Challenge, subject to meeting specified criteria. The government (DCLG) has also set aside £33m as part of a three year programme to promote advice and funding to local groups.
- 1.7.5 Legal agreements would need to be drawn up for each transferred service.
- 1.7.6 Devolution of services to communities is a major element of the development of sustainable communities.
- 1.7.7 Procurement exercises carried out as part of the proactive approach or following the submission of a successful expression of interest under the Right to Challenge will have to comply with the Council's Contract Procedure Rules. The Council will need to consider its approach to the qualitative assessment of bids, as it is likely that some of the eligible bodies will be unable to comply with or score highly in the usual criteria of financial standing, track record, health and safety, environmental performance, equality policies etc. This may result in some cases in the acceptance of a higher level of risk than normally adopted. Treating them differently to normal "contracting" bodies would be unfair and could risk challenge from the latter.

1.8 Conclusions

1.8.1 The Localism Act offers opportunities for people in the community to run services. The Council should determine its overall approach to the Community Right to Challenge, so that people in the community are clear about the process avoiding the creation of false expectations. From the possible approaches of reactive, proactive or very active, this report recommends a proactive strategy.

1.9 Relevant Documents

1.9.1 Appendices

Appendix A – Draft programme of expressions of interest.  
Appendix B – Summary of Community Right to Challenge

1.9.2 Background Documents

None

**IS THIS A KEY DECISION REPORT?**

Yes

X

No

If yes, when did it first appear in the Forward Plan?

May 2012

This is a Key Decision because: it affects Wards and Parishes

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Wards/Parishes affected: All.....

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