

Report of Assistant Chief Executive, Customer Access and Performance

Report to North West (Outer) Area Committee

Date: 12 December 2011

Subject: Localism Act 2011

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The [Localism Act 2011](#) having completed its passage through Parliament has been the subject of considerable debate at a national and local level.
2. New rights will be given to communities to bid for local assets and challenge to run council services. Changes to the planning system will increase local people's ability to get involved in shaping their local area.
3. The council has limited resources and has to prioritise meeting the aspirations of local areas alongside meeting the strategic needs of the city. It is important that expectations of what is possible through the Localism Act are explained. There will be some issues that the council may be able to help resolve with or on behalf of the community and some where local people will have to work together in an innovative way in order to achieve their aims.
4. It is important that the implications of the Localism Act are debated at a local level in order to inform the council's policy and approach to implementing this legislation.

Recommendations

5. That area chairs lead a debate at their area committees about localism and the contents of Act. It is important for areas to begin to think about what localism means for them and what they see as the main opportunities, challenges and risks taking into consideration the role they wish to play in future in engaging with their communities on this issue.
6. That any views, ideas, suggestions and concerns are fed back to officers in order to inform a further report to go to Executive Board on the implications of the Act and more detailed reports/sessions on Planning, Assets of Community Value and Right to Challenge agreed by area chairs.

1 Purpose of this report

- 1.1 To provide a high-level summary of the main elements of the Localism Act that will be of direct relevance to area committees and to provide an opportunity to debate and influence the way the council implements the legislation.

2 Background information

- 2.1 The Localism Bill was introduced to Parliament on 13 December 2010 and received Royal Assent on the 15 November 2011. The aim of the Act as with other changes in health, education and welfare reform is to devolve power to the lowest possible level, including individuals, neighbourhoods, professionals and communities as well as local councils and other local institutions.
- 2.2 The Act has been subject to consultation and debate over the last year and there have been a large number of changes at the committee stages in Parliament. Further regulations and guidance will be published over the next 6 months.

3 Main issues

3.1 Local Government

- 3.2 Councils will be given a new General Power of Competence (GPC) in order to better respond to local need. The GPC is an extension to already available “well-being” powers and will allow councils to take any action on behalf of local people not proscribed by other laws. The council will have to tread carefully however if it wishes to do anything new and government has the power to intervene and overturn council decisions.
- 3.3 Leeds, as a ‘core city’ has been working with other councils to ensure that further powers are devolved to gain flexibility in relation to skills and innovation, transport and the economy, this resulted in an amendment to the bill. This is being moved forward in Leeds by the Leeds City Region and the Leeds Local Economic Partnership (LEP) who are producing “policy asks” in order to negotiate the specific powers with ministers.
- 3.4 Amendments to the bill have removed the Secretary of State’s powers to make regulations relating to area committees. Councils will be able to establish what area committees they want and delegate the necessary functions without asking for regulations or permission from the secretary of state. There will no longer be restrictions on the maximum size of area committees.
- 3.5 A referendum on whether Leeds should have an Elected Mayor will take place in May 2012 and a [consultation](#) document has been published by the government on the proposed approach for giving powers to any mayors, asking for responses by 3rd January.
- 3.6 The standards board regime will be abolished with councils given the power to decide their own arrangements. It will be compulsory for all councils and parish and town councils to have a [code of conduct](#) based on the [Nolan principles of public life](#) selflessness, integrity, objectivity, accountability, openness, honesty and leadership. This means that as a council a local code of conduct can be adopted rather than one set nationally.
- 3.7 There is a requirement for councils to prepare a ‘pay and policy statement’ by March 2012 that details the pay arrangements for the councils highest paid and lowest paid staff.

3.8 Business rates

- 3.9 The localisation of business rates is being developed as part of the local government resource review which will also look at the implementation of community budgets. Business rates will be collected and spent locally rather than given directly to and re-distributed by the government on the basis of need. The council submitted a consultation to the government's proposals and this was subject to a report to [Executive Board](#) on the 2nd November.
- 3.10 **Community right to challenge**
- 3.11 Under the Community Right to Challenge voluntary and community groups, parish councils and local authority staff will be able to challenge and formally submit ideas through an expression of interest to run all or part of a council service. A challenge could come from any voluntary group including a social enterprise, co-operative or community interest company (i.e. an organisation where not all profits are reinvested in their activities or the community but their activities are for the benefit of the community). These groups do not necessarily have to be local or have a local connection.
- 3.12 The council will have to consider an expression of interest and either reject, accept or accept with modification what is submitted. Accepting an expression will automatically trigger a procurement exercise where any other organisation including the private sector can participate in this.
- 3.13 An expression of interest can be received at any time unless the council chooses to specify periods during which expressions of interest may be submitted. There will be a requirement for councils to set and publish these timescales, having regard to factors which will be set out in further guidance. In order to prevent delays to the process, councils will need to notify relevant bodies of how long the timescale will be for a decision within 30 days.
- 3.14 If a service has already been contracted out submitting an expression of interest would not affect the existing contract and any procurement exercise would be carried out when the contract for that service is due to end.
- 3.15 The [Duty of Best Value](#) is important because it makes clear that councils should consider overall value – including social value – when considering service provision. A list of information to be included in an expression of interest is to be published in regulations. The government consulted on the right to challenge process earlier on in the year and based on responses produced a [position paper](#) highlighting how the process would work. Information to be included in an expression of interest will now include *“details of the outcomes to be achieved, including how it meets service user needs and the social value offered by the proposal”*.
- 3.16 There has been much debate about which services should be excluded from the Right to Challenge and the Secretary of State has the power to make certain services exempt. Currently the right applies to any service provided by or **on behalf** of the council. All **functions** (a function is defined as a duty or power that requires decision-making by the responsible person or body of the council) are currently out of its scope. The government is clearly committed through its [‘Open Public Service White Paper’](#) to further widen the scope of the community right to challenge, both in terms of the bodies that may be open to challenge and the range of services and functions to be open to challenge.
- 3.17 There is a risk that the right to challenge may lead to the fragmentation of services as groups could cherry-pick the parts of a service they want making it more difficult for the council to deliver what's left. This could result in increased costs or having an impact on what services can be offered. There will also be risks in terms of governance and accountability. The council's corporate commissioning group is currently looking to develop a process to respond to expressions of interest submitted under the right to challenge. This links with work already

underway to make the councils procurement and commissioning processes more accessible to the third sector and small businesses. A briefing and information was given to Third Sector Leeds who are subsequently going to produce a statement on localism and explore how they can best support communities namely in inner city areas to take up the right to challenge and manage local assets.

3.18 **Assets of community value**

- 3.19 Local authorities will be required to maintain a list of [Assets of Community Value](#) as well as a list of unsuccessful community nominations, including both public and private assets. These assets can be nominated by parish councils and voluntary and community organisations with a local connection (further guidance to be issued on this). The lists must be published and be freely available for public inspection.
- 3.20 When listed assets come up for disposal, the group who nominated the asset will be notified and they will be given six months to develop a bid and raise the capital to buy the asset when it comes on the open market. This will help local communities to save sites which are important to the community, which will contribute to tackling social need and building up resources in their neighbourhood. Local people will need to find funding to take over the asset. There is no obligation on the landowner to dispose to an eligible community group, only a right to bid.
- 3.21 Assets of community value could be council owned (libraries, day centres, leisure centres etc) or private properties (pubs, post offices, shops, playing fields, woodland etc). If accepted by the authority as having community value, property on the list would be restricted from normal disposal for a period of 5 years.
- 3.22 If private assets are nominated to the list the owner has the opportunity to appeal and if the owner incurs loss or additional costs for complying with the regulations then the council will be required to pay compensation to the asset owner. Increased requests for assets transfer are likely to occur and the council will be under pressure to give communities more than 6 months to raise funds to take-over assets. This may have an impact on the council's capital receipts programme and the ability to raise revenue from the sale of buildings and land. [Capital receipts incentive scheme](#) has been proposed that will give a proportion of the money from applicable asset sales directly to the community. This scheme is subject to member consultation and officers are to produce further practice guidance about how the scheme will work. If approved this would begin in April 2012.
- 3.23 The council already has a strong track record of supporting community assets transfer. A draft approach to Assets of Community Value is to be agreed and will include nomination forms for community groups and details of how the scheme will be advertised and published. This duty will be built into procedures for disposal of council owned property where it is 'listed', as part of the proposed community asset transfer framework due to be agreed by Executive Board early next year.

3.24 **Neighbourhood planning**

- 3.25 The governments aim is to reform the planning system by making it simpler and giving more control to local councils and local people. The government believes that more local ownership through neighbourhood planning will lower the level of opposition to new development and enable communities to secure well-designed buildings in keeping with their local area. There is a general concern that stripping away planning regulations and guidance will leave local authorities subject to challenge. Currently the onus is on councils to draft their own policies and to speedily produce up to date local plans at a time when they are dealing with a reduction in staff numbers and expertise in planning departments.

- 3.26 The reforms have so far been criticised by many as there is a conflict between the government's growth agenda and localism. Neighbourhood plans are part of a wider reform agenda to pass more control over planning matters to councils and communities. The government has published a draft [National Planning and Policy Framework](#) (NPPF) that has been subject to public consultation. Leeds submitted a [response](#), heavily critical of the new policy, lack of reference to brown-field site and the "presumption in favour of sustainable development". The government has recently announced they intend to modify the document and put in place transitional arrangements for local authorities who do not have an up to date local plan.
- 3.27 There are planned major changes to the planning system with the planned removal of regional spatial strategies (RSS) following the completion of an [environmental impact assessment](#) currently out for consultation with the deadline Friday, 20 January 2012.
- 3.28 The core strategy is anticipated to be considered by Executive Board in the New Year and submitted in spring 2012 at which time there will be a formal opportunity (6 weeks) to comment. Any comments made will be fed into the public examination and inquiry process to consider whether the core strategy is "sound", in other words, ensuring that evidence requirements are met and it complies with statutory requirements.
- 3.29 The abolition of RSS has raised uncertainties surrounding the scale of housing growth and the need to plan for further population growth and how to best achieve this. As part of the core strategy the [Strategic Housing Market Assessment](#) (SHMA) was updated in 2010 and this forms part of the evidence base which will help to inform future housing and planning policies and strategies. In addition the [Strategic Housing Land Availability Assessment](#) (SHLAA) exercise, published by the council in 2009, establishes the potential scale of land coming forward in the future to meet housing needs across the city. This will be used to conduct the site allocation process that will be undertaken following the core strategy.
- 3.30 A recent scrutiny enquiry and consultation has been undertaken in Leeds surrounding housing growth. The outcomes of the [enquiry](#) and the [consultation](#) complemented each other in terms of their recommendations. The recommendations will inform part of the council's core strategy.
- 3.31 A new form of neighbourhood planning is being introduced to give communities more powers to shape the future of where they live. This could include where new homes, shops and offices should be built, what those buildings should look like (type of materials, scale and character) and which green space should be protected or created. The plans can grant planning permission for the new buildings communities want to see go ahead (neighbourhood development orders) or lead themselves (community right to build).
- 3.32 The new plans will be led by parish and town councils or neighbourhood forums where there is no parish council. They have more weight than existing community-led plans and design statements but must be in "general conformity with the council's strategic policies for the city and will be subject to an independent examination. A referendum may not be required when all parties are in agreement with the plan and it is in "general" conformity with an authority's local plan. Where there is conflict between the council and the community it is suggested that a referendum should take place.
- 3.33 A report, to be agreed at Executive Board "[Developing a response to neighbourhood planning in Leeds](#)" sets out the council's plans to pilot neighbourhood planning in four areas of the city (Otley, Boston Spa, Kippax and Holbeck). The [regulations for neighbourhood planning](#) are currently out for consultation, the deadline for responses is 5th January 2012. A seminar for parish and town councils on neighbourhood planning was held on 17th October, parishes were invited to comment on the draft neighbourhood planning regulations.

- 3.34 There are a number of other changes designed to provide incentives to development such as the [New Homes Bonus](#). This commenced in April 2011, and will match fund the additional council tax raised for new homes and empty properties brought back into use, with an additional amount for affordable homes, for the following six years.
- 3.35 In addition the regulations on [Community Infrastructure Levy](#) (CIL) are now out for consultation. The deadline for responses is 30th December; Leeds City Council will be submitting a response to this that will go to Executive Board on the 14th December. Local people are keen to keep the majority of funds from development for spending in their local area (Leeds housing scrutiny enquiry recommended 80%). However, the government has suggested a “meaningful” amount is spent locally and that a cap is placed on this amount so it is likely that the percentage will be significantly less.
- 3.36 Pre-application consultation is proposed to be made a statutory requirement for large scale developments. It will be crucial for developers to begin consultation at an early stage, ensuring objections can be minimised. It is currently best practice for developers to consult prior to submitting planning applications. Guidance is set out in the council's [Statement of Community Involvement](#) however this is something that the council cannot currently enforce. Developing new ways to engage with local people in planning and working more effectively with developers will be a challenge and an area the council is looking to develop its approach to. Indeed developers are keen to engage with local people in order to speed up the whole planning process.
- 3.37 Housing Reforms**
- 3.38 From 2012, as part of the Localism Act councils will need to produce a Tenancy Strategy, setting out the council's approach to ensuring that registered housing providers offer and issue tenancies which are compatible with the purpose of the housing, the needs of individual households, the sustainability of the community and the efficient use of their housing stock.
- 3.39 A consultation with the range of housing partners in the city on agreed roles for each tenure and the tenancy arrangements that should be put in place across rented housing in Leeds. This will include where flexible tenancies could and should be offered. From this a Tenancy Strategy will be drawn up.
- 3.40 A new national '[HomeSwap Direct](#)' scheme will make it easier for tenants living in a council or housing association home to find a new property in another part of the country. The scheme will link into local homeswap schemes that some councils already have in place.

4 Corporate Considerations

4.1 Consultation and Engagement

Responding to national consultation

- 4.1.1 Each part of the Act has been subject to extensive national consultation and debate. Officers have written responses that have been agreed with members before being submitted to government. This report forms part of the consultation process in anticipation for when the bill becomes law and the various elements of the Act are enacted. Area committees are asked to provide their feedback highlighting any concerns and/or opportunities which may be used to form an Executive Board report on the Act and the implications in early 2012.

Local community engagement

4.1.2 Strong evidence of consultation and engagement of local people is required in order to take forward many of the powers outlined in this report. The council is currently in the first stage of reviewing the way we deliver all types of engagement, under the 'Way Forward' review that was described at area chairs forum in November 2011. Area Committees will be invited to give their views on the 'Way Forward' during January/February meetings, as part of the consultation on developing a shared operating framework for community engagement.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 The government have produced equality impact assessments for each part of the Act. There are concerns that the powers in the Act are more likely to be taken up in certain areas of the city. Non-parished areas of the city are more likely to be at a disadvantage because of the need to form neighbourhood forums, that meet set (but as yet uncertain) criteria in order to undertake neighbourhood planning.

4.2.2 A communities ability to run services and manage assets will depend on the amount of community activity and groups already operating in an area; the level of organisation and ability to bring in investment and support from elsewhere; and/or to be innovative and find new ways of generating income locally. The council's role in enabling all communities who want to take-up these powers to do so will be a challenge and there will be a need to draw support from all sectors including the private and third sector.

4.3 Council Policies and City Priorities

4.3.1 Successful implementation of the Localism Act will enable the council to deliver a number of its strategic objectives through the locality working agenda most notably the Housing and Regeneration and Sustainable Economy and Culture City Priority Plans.

4.4 Resources and Value for Money

4.4.1 The government have produced impact assessment for each section of the Act. It is expected that these will be revisited in light of the changes that have been made and republished. The costs are largely uncertain as it is based on the level of take up across the city and aspirations of communities. There are likely to be considerable costs involved but there is an opportunity to save money that the council may incur later on through legal challenge to the councils planning policies and individual planning applications as well as challenge relating to our decisions surrounding service delivery.

4.5 Legal Implications, Access to Information and Call In

4.5.1 A legal assessment of the Act is to be carried out. Links to further information sources have been provided where possible. This report is not subject to call-in.

4.6 Risk Management

4.6.1 There are a number of risks linked to this agenda including a potential delay to the decision making process. Fragmentation of services and variation and inequality in the level/quality of services that people receive depending on where they live in the city.

5 Conclusions

5.1 Communities will benefit from considering neighbourhood planning, community right to challenge and asset management issues together. Identifying any opportunities within their area and how they could work with other communities. The ability to share best practice

across the city and across the country will help to ensure more opportunities are realised and spread widely.

6 Recommendations

- 6.1 That area chairs lead a debate at their area committees about localism and the contents of Act. It is important for areas to begin to think about what localism means for them and what they see as the main opportunities, challenges and risks taking into consideration the role they wish to play in future in engaging with their communities on this issue.
- 6.2 That any views, ideas, suggestions and concerns are fed back to officers in order to inform a further report to go to Executive Board on the implications of the Act and more detailed reports/sessions on Planning, Assets of Community Value and Right to Challenge agreed by area chairs.

7 Background documents

- 7.1 Localism Act 2011: <http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>
- 7.2 What can a mayor do for your city? A consultation
<http://www.communities.gov.uk/publications/localgovernment/mayorsconsultation>
- 7.3 Leeds city council member code of conduct
http://www.leeds.gov.uk/Council_and_democracy/Councillors_democracy_and_elections/Councillors_information_and_advice/Members_code_of_conduct.aspx
- 7.4 Nolan principles of public life <http://www.public-standards.gov.uk/>
- 7.5 Local Government Resource Review Consultation, Executive Board Report, 2nd November 2011 <http://democracy.leeds.gov.uk/mgConvert2PDF.aspx?ID=60916>
- 7.6 Best Value Duty Statutory Guidance, DCLG
<http://www.communities.gov.uk/documents/localgovernment/pdf/1976926.pdf>
- 7.7 Community Right to Challenge, DCLG, September 2011,
<http://www.communities.gov.uk/documents/localgovernment/pdf/1986977.pdf>
- 7.8 Open public service White Paper, Cabinet Office <http://www.cabinetoffice.gov.uk/resource-library/open-public-services-white-paper>
- 7.9 Assets of community value - policy statement, DCLG, September 2011
<http://www.communities.gov.uk/documents/localgovernment/pdf/1987150.pdf>
- 7.10 Capital Receipts Incentive Scheme, Executive Board Report,
<http://democracy.leeds.gov.uk/mgConvert2PDF.aspx?ID=60292>
- 7.11 Easier to read summary – draft National Planning Policy Framework,
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1972109.pdf>
- 7.12 Draft National Planning Policy Framework – Consultation Response, Executive Board Report, <http://democracy.leeds.gov.uk/mgConvert2PDF.aspx?ID=60239>
- 7.13 Environmental report on the revocation of the Yorkshire and Humber Plan, DCLG,
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2012158.pdf>

- 7.14 Leeds City Council Strategic Housing Market Assessment
[http://www.leeds.gov.uk/Environment_and_planning/Planning/Planning_policy/Strategic Housing Market Assessment \(SHMA\).aspx](http://www.leeds.gov.uk/Environment_and_planning/Planning/Planning_policy/Strategic_Housing_Market_Assessment_(SHMA).aspx)
- 7.15 Leeds City Council Strategic Housing Land Availability Assessment
[http://www.leeds.gov.uk/Environment_and_planning/Planning/Planning_policy/Strategic housing land availability assessment \(SHLAA\).aspx](http://www.leeds.gov.uk/Environment_and_planning/Planning/Planning_policy/Strategic_housing_land_availability_assessment_(SHLAA).aspx)
- 7.16 Leeds Housing Growth Scrutiny Enquiry Report
<http://democracy.leeds.gov.uk/mgConvert2PDF.aspx?ID=61197>
- 7.17 Informal consultation on housing growth, Executive Board Report, 2nd November,
<http://democracy.leeds.gov.uk/mgConvert2PDF.aspx?ID=61220>
- 7.18 Developing a response to neighbourhood planning in Leeds Executive Board Report, 2nd November, <http://democracy.leeds.gov.uk/mgConvert2PDF.aspx?ID=61222>
- 7.19 Neighbourhood planning regulations consultation, DCLG,
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1985878.pdf>
- 7.20 <http://www.communities.gov.uk/housing/housingsupply/newhomesbonus/>
- 7.21 Community Infrastructure Levy: Detailed proposals and draft regulations for reform – Consultation, DCLG,
<http://www.communities.gov.uk/publications/planningandbuilding/cilreformconsultation>
- 7.22 Leeds Statement of Community Involvement
<http://www.leeds.gov.uk/page.aspx?pageidentifier=2806af09-9c0f-4b12-8464-ec10f1e938d9>
- 7.23 DCLG news article *Grant Shapps: nationwide home swaps become 'just a click away'*
<http://www.communities.gov.uk/news/localgovernment/2016097>