

GOVERNANCE COMMITTEE

Agenda Item 46

Brighton & Hove City Council

Subject: Decentralisation and Localism Bill – update

Date of Meeting: 16 November 2010

Report of: Strategic Director Resources

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Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The Coalition Programme for Government and the Government Spending Review have set out a programme of significant public service reform. The Government's vision, as set out in its Programme for Government, is "to promote a radical devolution of power and greater financial autonomy to local government and community groups."
- 1.2 The Decentralisation and Localism Bill is anticipated to be the key piece of legislation that will deliver the proposed new freedoms and flexibilities for councils. It is expected to cover many areas of reform which will impact on the role and function of the Council. This report sets out an early indication of the main elements of the Bill.
- 1.3 The Bill is expected to be published by the end of November 2010. There is likely to be a period of consultation built into the timetable in order to reflect the significance of a number of the measures in the Bill. The Council will wish to respond to any consultation papers that are issued. These responses will be brought to Governance Committee for approval where the Government timetable allows.

2. RECOMMENDATION:

- 2.1 That the Governance Committee notes the report and requests officers to report back to the Committee once the draft Bill is published.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Decentralisation and Localism Bill was announced as part of the Queen's Speech in May 2010. The Bill is intended to devolve greater powers to councils and neighbourhoods and give local communities control over housing and planning decisions. Since May, there have been a number of announcements and commitments made in relation to local government reforms across different

areas of service. The Decentralisation and Localism Bill is the vehicle that will be used to take these forward.

- 3.2 The Bill has not yet been published but the indications are that this is going to be a significant piece of legislation covering many areas. For that reason it was considered useful to highlight some of those areas early to enable Members to consider the potential impact and opportunities arising from the Bill.

Main elements of the Bill

Reform of the planning system

- 3.3 The Bill will address the Government's stated aim of ensuring that the planning system both works for sustainable growth and is responsive to the needs of local communities. The proposals include:-
- Abolition of Regional Spatial Strategies, with regional planning powers being returned to local authorities;
 - Abolition of the Infrastructure Planning Commission and replacement with a democratically accountable system that provides a fast track process for major infrastructure projects;
 - Greater powers to neighbourhoods to determine the shape of the places in which their inhabitants live through the "Community Right to Build". This would enable local people to make decisions about how their local area should grow. In particular it would allow:-
 - communities to take forward developments for new homes, shops and facilities in their area
 - community organisations to go ahead with developments which have overwhelming community support, without the need for planning permission
- 3.4 Minimum criteria would need to be met and it would not be possible to use the proposed Right to Build to expand communities by more than 10 per cent in a 10-year period. Questions and answers on the Right to Build, issued by DCLG, are attached at Appendix One.

Housing

- 3.5 The Bill is also expected to reflect the Government's intention to make social housing "more responsive, flexible and fair" and to reform the financing system for council housing. It is anticipated that the Bill will:-
- Abolish the current housing subsidy system. Under this reform the centralised system of council housing finance will be abolished. Local authorities will be in charge of how they spend housing income and will be allowed to keep rents and receipts from sales. Councils will be required to take on some of the centrally held debt under this proposal;

- Create trusts that would make it simpler for communities to provide homes for local people;
- Introduce a “new homes bonus” from April 2011 to reward and incentivise councils to be supportive of housing growth. The bonus has been stated to be “equivalent to matching the additional council tax from every new home for each of the following six years”;
- Change tenancy allocations to fixed term deals rather than being granted automatically “for life” and remove the right to buy from new tenants who sign up to fixed, short-term tenancies;
- Reform the regulation of registered providers and private registered providers (housing associations) who will no longer be regulated by the Tenant Services Authority.

Council constitutions

- 3.6 Communities Minister Andrew Stunell has announced that “councils will be able to run themselves under a system that works best for their area, in consultation with local people”. This is likely to mean that councils may choose to continue using the executive model of governance or return to the committee system. There will also be provisions for referendums for elected Mayors in the twelve largest cities.
- 3.7 In Brighton & Hove, the current position is that the Council is required by law to operate a Cabinet system. In relation to Elected Mayors, the Local Government and Public Involvement in Health Act 2007 prevents authorities holding a referendum within ten years of the previous one. This means that the earliest a Mayoral referendum could be held in Brighton & Hove under current legislation would be 18th October 2011.

General power of competence

- 3.8 The Government has made a commitment to include in the Bill a general power of competence. This will be a power of first resort which will be wider than the “well being” power introduced under the Local Government Act 2000. The well being power was designed to enable councils to do anything to improve the environmental, social or economic well being of the area. However, the power has been interpreted restrictively by the Courts and this has led to concerns that Councils are prevented from taking initiatives through fear of being held to have acted *ultra vires*.
- 3.9 The lobby for a general power of competence has significantly increased following the Court’s decision in a landmark case involving the London Borough of Brent. In that case, the Court of Appeal ruled that Brent could not use the well being powers to set up, with others, a mutual insurance company (LAML) in response to a perceived lack of competition in the local authority insurance market. The councils estimated they could save between 15-20% on their

premiums and felt the arrangements would improve their risk management .The Court found that the London Borough of Brent Council had not identified sufficiently how the actions they had taken would be likely to promote the well-being of their area. In the aftermath of the Court of Appeal judgment councils were given specific powers to set up mutual insurance companies. These are contained in the Local Democracy, Economic Development and Construction Act 2009.

- 3.10 A power of general competence would mean that rather than having to look for, or create, an express statutory power to act, there would be a presumption that councils could do anything unless it was expressly prohibited. Supporters pushing for this change believe that it will create much greater certainty for councils and will therefore encourage innovation.

Other key proposals

- 3.11 Council Tax - the Government has consulted on provisions for referendums to veto excessive council tax increases and this will be taken forward in the Bill. The Governance Committee considered this issue at its meeting on 28th September 2010.
- 3.12 Climate change – the Bill will be used to amend the Climate Change Act 2008 to remove the powers that allow local authorities to pilot waste reduction schemes – including charging householders based on how much they throw away. The changes will also make it easier for Local Authorities to bring in schemes to reward people who produce less waste.
- 3.13 Standards Board for England – Communities Minister Andrew Stunell has indicated that serious misconduct by Councillors for personal gain will be treated as a criminal offence. Other offences are likely to be regulated by a Code and provision for the closure of the Standards Board for England will be set out in the Bill.

4. CONSULTATION

- 4.1 The Bill is expected to be published by the end of November 2010. Once the draft Bill is published, officers will prepare a full briefing for Members and bring any proposed responses to related consultation papers to Governance Committee, where the timetable allows

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The anticipated Decentralisation and Localism Bill is expected to have significant financial implications which will be considered, quantified and reported back after the Bill is published.

Finance Officer Consulted: Anne Silley

Date: 03/11/10

Legal Implications:

5.2 These are set out in the body of the report.

Lawyer Consulted: Elizabeth Culbert

Date: 03/11/10

Equalities Implications:

5.3 There are no implications to note at this stage. When the draft Bill is published there will also be an Equalities Impact Assessment published which will be available publically and can be reported to Governance Committee together with the detail of the Bill.

Sustainability Implications:

5.4 None at this stage.

Crime & Disorder Implications:

5.5 None at this stage.

Risk and Opportunity Management Implications:

5.6 The Bill will have risk and opportunity management implications which will need to be considered in detail, and reported back to Governance Committee, once the Bill is published.

Corporate / Citywide Implications:

5.7 The Bill will have significant corporate and citywide implications which will need to be considered in detail once the Bill is published.

SUPPORTING DOCUMENTATION

Appendices:

1. DCLG Questions and Answers on the Community Right to Build

Documents In Members' Rooms

None

Background Documents

None

