

| | | | |
|--------------------------|-----------------------------------|--|---------------------|
| Subject: | Alternative Local Taxation | | |
| Date of Meeting: | 19 March 2015 | | |
| Report of: | Monitoring Officer | | |
| Contact Officer: | Name: | Abraham Ghebre-Ghiorghis | Tel: 29-1515 |
| | Email: | abraham.ghebre-ghiorghis@brighton-hove.gov.uk | |
| Ward(s) affected: | All | | |

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the report need input from different sources and due to work pressures was not possible to do this in time.

1. PURPOSE OF REPORT AND POLICY CONTEXT

1.1 At its meeting on 4th December 2014, the Committee considered a petition asking the Council to investigate the introduction of “a more progressive form of local funding that will support life for the many, not just the few.” The Committee instructed officers to bring a report to a future meeting and this report informs Members of the legal, financial implications of introducing a system of local taxation as proposed by the petitioners.

2. RECOMMENDATIONS:

2.1 That the Committee notes the report.

3. CONTEXT/ BACKGROUND INFORMATION

3.1 At its meeting on 24th October 2014, full Council received a petition signed by a total of 622 individuals calling for the Council to explore a modified form of Council tax to fund local services. The full text of the petition was as follows:

“We call upon Brighton & Hove City Council to invest time and resources now into investigating all possible legal avenues to make those residents with the greatest housing wealth pay a greater contribution in local taxes, and do this with full engagement between the Council and residents. Furthermore, we ask Councillors from Brighton & Hove Green Party and Brighton & Hove Labour Party to do everything possible to support Council Officers in the development of a more progressive form of local funding that will support life for the many, not just the few.”

Lead petitioner – David Walker

- 3.2 The petition was referred to the Policy & Resources Committee in accordance with Council Standing Orders and the committee, at its meeting on 4th December 2014 instructed officers to bring a report to a future meeting of the committee.
- 3.3 As the exact nature of the proposal was not clear, officers met with the Lead Petitioner and it was agreed that he would submit a written note outlining the proposals. This was received on 25 February and is attached as an appendix to this report.
- 3.4 The essence of what is proposed appears to be as follows:
- (a) To increase Council tax by a factor of 5 or 10 (i.e. five or ten fold increase.);
 - (b) Use the proceeds to stop the impact of reduction in central government funding, protect the most vulnerable and reduce inequality; and
 - (c) Introduce a refund or payment system based on property values based on a banding system or some other arrangement.
 - (d) P&R to authorise up to £20k for Counsel's advice

3.5 The Legal Powers

- 3.5.1 The paper does not state what powers it is intended to use to implement the proposals. However, subject to the discussion regarding public law considerations below, there are, at least in theory, potential statutory provisions that are relevant as potential sources of vires (powers.) These include:
- (1) The Local Government Finance Act 1992 regarding setting levels of Council tax;
 - (2) Section 13A of the Local Government Finance Act 1992 (as amended by the Local Government Finance Act 2012) regarding reduction of Council Tax; and
 - (3) The general power of competence contained in section 1 of the Localism Act 2011.

The exercise of the above powers, even where a prima facie powers exist, is subject to public and administrative law principles and one should not read them in isolation.

3.6 The Local Government Finance Act 1992 (setting the Council Tax)

- 3.6.1 The Local Government Finance Act 1992 gives the Council the power and duty to set levels of Council tax. There is no express limitation on the face of the legislation itself as to the level of Council tax the Council can set, except that, if the increase in any year exceeds what the Secretary of State designates as "excessive," then the Council tax increase has to be the subject of a referendum. The level of council tax is therefore for the council's discretion.
- 3.6.2 The exercise of discretionary powers by the Council in making a decision as to the level of increase in Council tax is subject to ensuring that those

powers are exercised for the purpose for which they are given, and should be **Wednesbury** reasonable, as well as complying with other public and administrative law principles.

- 3.6.3 The general power of competence under the Localism Act cannot be used to “supplement” the power in the Local Government Finance Act 1992 so as to avoid any express or implied limitations under the 1992 Act. Applying this and general administrative law principles, it seems there are some significant potential legal problems with what is being proposed:

(a) Is purpose for which the power is being used a proper purpose?

The practical impact of the proposal is, arguably, to effectively replace a one form of local taxation with something that is fundamentally different. To raise Council tax not just to cover the expected expenditure but to implement a significant level of income redistribution over and above what is envisaged in the 1992 Act, including the Council Tax Reduction Scheme, could be susceptible to challenge by way of judicial review for using a power for an improper purpose.

(b) Is the exercise of the power reasonable?

The proposal involves increasing the Council tax by 500 to 1000%. It also involves valuing all the properties in the city, which will involve a significant cost and logistical undertaking. Given this and the fact that this is a fundamental departure from the statutory national scheme, there is a significant risk and high level of probability that the court would find this an unreasonable use of discretionary power.

- 3.6.4 In considering the above public law principles, account should be taken of the usual approach of the courts to issues involving taxation and raising revenue by local authorities. As recently confirmed in the judgment of Mrs Justice Lang in the case of ***The Queen on the Application of David Atfield v London Borough of Barnet 2013***, the courts apply a strict interpretation when looking at revenue raising powers. An increase of the proportion proposed with the burden being shifted in the way proposed involving a radical departure from the national framework is not likely to be seen favourably by the Courts. Therefore it is likely that a court would strike down the proposed scheme as either an unreasonable use of power or use of power for an improper purpose.

3.6.5 General Power of Competence

- 3.6.5.1 The general power of competence (GPC) in Part 1 of the Localism Act 2011 authorises local authorities to do anything that an individual could do. As individuals do not have the power to raise taxes and introduce a refund scheme, it is submitted that the general power of competence cannot be used to implement the new system.

3.6.6 Practical Considerations

3.6.6.1 Even if the Council were minded to introduce the proposed scheme, there are significant financial and practical difficulties in addition to the legal ones outlined above. The undertaking to value every property, or, if an income based system is chosen, to ascertain every ones income will be prohibitively expensive. There is also a significant likelihood of people challenging the increased level of council tax or simply refusing to pay it reducing the collection rates.

3.7 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

3.7.1 The Council has the option of commissioning further, more detailed work into the proposal. But, for the reasons set out in this report, it is unlikely that any review will come to a different conclusion.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

4.1 There has been no consultation undertaken with the public on these proposals. But the views of the Council's finance and legal teams have been sought and incorporated into the report.

5. CONCLUSION

5.1 It is officers' view and conclusion that this option is not pursued.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

6.1 There would be significant financial and resource costs in developing further work on this proposal. It would be very challenging to quantify the true and full cost of the scheme, but it is highly likely to be disproportionately expensive and, given the legal risks, not one the Council should embark on.

Finance Officer Consulted: Rachel Musson

Date: 13/03/15

Legal Implications:

6.2 The legal implications are incorporated into the body of the report.

Lawyer Consulted: Abraham Ghebre-Ghiorghis

Date: 12/03/15

Equalities Implications:

6.3 The proposals in the petition could have significant positive effect in term of finding more resources to support vulnerable groups and reducing inequality. However, the practical and legal problems associated with it do not make it a viable option.

Sustainability Implications:

6.4 None identified

Any Other Significant Implications:

6.5 None identified

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1: Notes on behalf of petitioners

Advice to Head of Law and March 2015 P&R

Re: New Deal for Brighton and Hove

Confirmation of what is being proposed

Council Tax is proposed to be raised significantly (subject to a referendum), possibly by a factor of 5 or 10, in order to fund a programme of inequality reduction, as well as raising funds to stop cuts in services and support for vulnerable residents due to the current and ongoing austerity programme to 2020.

The method of inequality reduction is a matter for councillors at a later stage but I favour using current property value, probably by banding them.

Next Step

It was accepted by the Head of Law and the campaign that, technically, the proposal is legally possible. The issue is whether this could be overturned in court by a judge who deems Council Tax powers to have been contravened.

The prudent next step would be to seek advice from a QC as to how best to demonstrate the legal separation of the 2 components of the proposal, and seek a ruling that it is legally sound. This can be done by seeking a Declaration.

We ask that P&R authorise a suitable budget (possibly £20,000) to seek advice from a QC on pursuing a Declaration on the proposal.

Justification

Locally, people have already lost their lives due to the effects of 'austerity' and many have lost their homes and are more people in poverty are now in work than not. Those not employed, especially due to disability and sickness, have been acutely suffering and the moral imperative to address this is undeniable.

There is currently no other genuinely progressive proposal to tackle the funding crisis and growing inequality within existing legislation. We must 'leave no stone unturned' in the search for an immediate solution to the humanitarian crisis of a sizeable and growing impoverished section of the local population.

David Walker
Campaign Co-ordinator

Supplementary Comments

Following are my notes on your report. Please include these in the appendix as well.

3.6.2

As we discussed, and confirmed by DCLG, a council can create an independent benefit to reduce inequality and fund it from the General Fund. Council Tax can be used to fund General Fund expenditure.

The advice appears to me to be given on the whole proposal and not in relation to the 2 separate components. A judge may view them as combined and say they breach Council Tax powers.

The benefit itself is not dependent upon a Council Tax rise, but the level of the benefit is dependent upon sufficient funding. As it is legitimate expenditure, it can be funded by Council Tax rises for a higher level.

David Atfield v London Borough of Brent 2013

I believe it is Barnet and not Brent. It concerns the increase in resident permit charges. A particular type of scheme where the income should reflect the costs of the scheme, such as with 'bounced' bank penalties. We discussed this. Council Tax can fund the priorities and projects from the Corporate Plan of the council. The multi-year Corporate Plan includes as a top priority, reducing inequality. There is a good case to argue in court, that it is a legitimate use of Council Tax to address extreme inequality in the city.

Declaration

You've not included advice on the option of seeking a Declaration to challenge it in court. Councillors need to be aware of all the options.

Practical

You've commented on the practical aspect but we only discussed the valuations, which wasn't for every house. It would only probably require the top 20% of homes to meet my preferences. You've not acknowledged that the benefit is intended to be awarded automatically, so with no means testing and significant administration.

Kind regards,

David Walker