

Agenda Item No: 7

Report To: Cabinet

Date: 10/04/2014

Report Title: Amendments to the Council's Community Right to Challenge Procedure and Officer Delegations

Portfolio Holder: Portfolio Holder for Resource Management and Control, Neil Shorter

Report Author: Policy and Performance Officer, Nicholas Clayton



Summary:

The Community Right to Challenge provisions came in to force in June 2012, and allow community groups, parish councils and groups of employees to express an interest in running a service currently provided by, or for, the council. This can include services contracted out to third parties and those provided in-house.

This report proposes amendments to the Council's current policy and procedure for dealing with expressions of interest submitted pursuant to the Community Right to Challenge, to tie in more closely with contractual time frames and offer increased flexibility when responding.

Key Decision: NO

Affected Wards: ALL

Recommendations: **The Cabinet be asked to recommend to Council:-**

1. **To agree the amendments to the Council's Community Right to Challenge policy and procedure as set out below –**

For multi-year contracted services of two years or more

- i. **The time frame during which Ashford Borough Council will accept the submission of an Expression of Interest will be a one month period ending 18 months before the date of the end of the contract¹ (ignoring any extension to the contract granted under its terms).**
- ii. **The maximum time within which Ashford Borough Council will make a decision on whether to accept or reject an Expression of Interest and notify the part that has**

¹ S.82(2) of the Localism Act

submitted that Expression of Interest will be six months from the date of the end of the one month period during which the Council will accept the submission of an Expression of Interest.

- iii. The minimum and maximum period of time before any relevant procurement exercise begins will be from the date of the acceptance of an Expression of Interest to the date of the end of the contract (including any extension to the contract granted under its terms).
- iv. That the decision on whether to accept, reject or modify an Expression of Interest should be delegated to the relevant Head of Service, in consultation with the Council's Head of Legal and Democratic Services and the relevant Portfolio Holder

For contracted services where the contract term is between 10 months and one day and two years

- v. The time frame during which Ashford Borough Council will accept the submission of an Expression of Interest will be a one month period ending nine months before the date of the end of the contract. (ignoring any extension to the contract granted under its terms).
- vi. The maximum time within which Ashford Borough Council will make a decision on whether to accept or reject an Expression of Interest and notify the party that has submitted that Expression of Interest will be six months from the date of the end of the one month period during which the Council will accept the submission of an Expression of Interest.
- vii. The minimum and maximum period of time before any relevant procurement exercise begins will be from the date of the acceptance of an Expression of Interest to the date of the end of the contract (including any extension to the contract granted under its terms).
- viii. That the decision on whether to accept, reject or modify an Expression of Interest should be delegated to the relevant Head of

Service, in consultation with the Council's Head of Legal and Democratic Services and the relevant Portfolio Holder.

For non-contracted services and contracts of ten months or less

- ix. The time frame during which Ashford Borough Council will accept the submission of an Expression of Interest will be a one month period for the month of June every five years beginning 1 June 2019.**
- x. The maximum time within which Ashford Borough Council will make a decision on whether to accept or reject an Expression of Interest and notify the party that has submitted that Expression of Interest will be three months from the date of the end of the one month period during which the Council will accept the submission of an Expression of Interest.**
- xi. The minimum and maximum period of time before any relevant procurement exercise begins will be from the date of acceptance of an Expression of Interest to 12 months thereafter.**
- xii. That the decision on whether to accept, reject or modify an Expression of Interest should be delegated to the relevant Head of Service, in consultation with the Council's Head of Legal and Democratic Services and the relevant Portfolio Holder.**

General

- xiii. To delegate authority to the Head of Community and Housing to prepare, publish (including publication on the Council's website) and maintain the Council's Contracts Register which will include details of the time frames when expressions of interest may be submitted in relation to a service covered by a Council contracts. This will ensure that those thinking of using the Right to Challenge know when they can submit an expression of interest.**
- xiv. To delegate authority to the relevant Head of Service in consultation with the Head of**

Legal and Democratic Services to refuse to consider and Expression of Interest submitted outside of the Council's published time frames for the acceptance of the submission of an Expression of Interest².

- xv. To amend the terms of reference of the Appeals Committee so as to exclude appeals in relation to the rejection of expressions of interest. This is because there is no requirement in the Localism Act to offer any right of appeal.**

Policy Overview: The Localism Act 2011 aims to give communities and individuals an increased say in the way their local services are delivered. As part of this, the Community Right to Challenge allows certain groups to express an interest in running a council service. If their expression of interest is accepted then the council must run a procurement exercise for that service.

Financial Implications: The council must already adhere to Best Value Guidance when procuring goods and services, to obtain continuous improvement and value for money. Running a procurement exercise in close proximity to having already undertaken such a process could lead to increased costs and uncertainty in service planning and provision.

Risk Assessment If the council does not put in place flexible, responsive and appropriate policy responses to manage the process by which it accepts the submission of Expressions of Interest under the Community Right to Challenge then there is a risk to both ongoing contractual arrangements and wider service-planning processes.

Equalities Impact Assessment N/A. The Community Right to Challenge came about as a result of new government legislation, and as such the main impact assessment on the legislation was undertaken by the government. It is not anticipated that the recommendations within this report will have a disproportionately adverse impact on any group with protected characteristics.

In setting its time periods for responding to an expression of interest, the council must weigh up the impact of these on the council, and take into account current contractual obligations and the needs of interested parties. In doing so, and in keeping the council's response to the Right under review (presenting amendments such as those included in this

² S.82(4) of the Localism Act

report) the council continues to mitigate the risk of disproportionate burdens being placed upon both the council and those wishing to exercise the Right.

**Background
Papers:**

**Portfolio Holders
Comments**

The Community Right to Challenge offers a useful new avenue for the Council and community groups to come together to develop new, more effective, ways of working. It is therefore crucial that we have a robust framework to respond even-handedly to any expressions of interest received so that we offer the opportunities for these groups to contribute whilst not unduly impact on contractual arrangements which are already in place, and I endorse the approach taken by this report.

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Agenda Item No. 7

Report Title: Amendments to the Council's Community Right to Challenge Procedure and Officer Delegations

Purpose of the Report

2. To implement amendments to the Council's policy and procedure for responding to expressions of interest submitted pursuant to the Community Right to Challenge to tie in more closely with contractual time frames and offer increased flexibility when responding.

Issue to be Decided

3. For Cabinet to decide whether to recommend to Council to agree to the proposed amendments to the Council's policy and procedure for responding to expressions of interest submitted pursuant to the Community Right to Challenge set out in paragraph 6(i-xv) or not.

Background

4. The Community Right to Challenge came in to force in June 2012, and allows community groups, parish councils and groups of employees to express an interest in running a service currently provided by, or for, the council. This can include both services contracted out to third parties and services provided in-house, but not including those functions of the council which only it can undertake (for example, determining planning applications). If an expression of interest is accepted then the council is required to run a relevant procurement exercise on that service in the near future.
5. In order to respond quickly to the requirements of this new legislation, Cabinet and Council agreed a number of procedure and policy elements in June and October 2012 including a single annual window within which all expressions of interest would need to be submitted for them to be considered and determined.
6. It has since become apparent that some of what was agreed in 2012 could be improved to allow for greater flexibility when the Council comes to responding to expressions of interest, specifically in relation to those submitted in relation to services where there is already a contract in place. This report seeks to remedy that situation by proposing a number of amendments.

Proposed Amendments

7. It is proposed that the policy and procedure is amended so as to give flexibility to the Council and to recognise the difference between contracted out services, of different length contracts, and in-house services. The proposed policy and procedure is presented in full below –

For multi-year contracted services of two years or more

- i. The time frame during which Ashford Borough Council will accept the submission of an Expression of Interest will be a one month period ending 18 months before the date of the end of the contract³ (ignoring any extension to the contract granted under its terms).
- ii. The maximum time within which Ashford Borough Council will make a decision on whether to accept or reject an Expression of Interest and notify the party that has submitted that Expression of Interest will be six months from the date of the end of the one month period during which the Council will accept the submission of an Expression of Interest.
- iii. The minimum and maximum period of time before any relevant procurement exercise begins will be from the date of the acceptance of an Expression of Interest to the date of the end of the contract (including any extension to the contract granted under its terms).
- iv. That the decision on whether to accept, reject or modify an Expression of Interest should be delegated to the relevant Head of Service, in consultation with the Council's Head of Legal and Democratic Services and the relevant Portfolio Holder

For contracted services where the contract term is between 10 months and one day and two years

- v. The time frame during which Ashford Borough Council will accept the submission of an Expression of Interest will be a one month period ending nine months before the date of the end of the contract. (ignoring any extension to the contract granted under its terms).
- vi. The maximum time within which Ashford Borough Council will make a decision on whether to accept or reject an Expression of Interest and notify the party that has submitted that Expression of Interest will be six months from the date of the end of the one month period during which the Council will accept the submission of an Expression of Interest.
- vii. The minimum and maximum period of time before any relevant procurement exercise begins will be from the date of the acceptance of an Expression of Interest to the date of the end of the contract (including any extension to the contract granted under its terms).
- viii. That the decision on whether to accept, reject or modify an Expression of Interest should be delegated to the relevant Head of Service, in

³ S.82(2) of the Localism Act

consultation with the Council's Head of Legal and Democratic Services and the relevant Portfolio Holder.

For non-contracted services and contracts of ten months or less

- ix. The time frame during which Ashford Borough Council will accept the submission of an Expression of Interest will be a one month period for the month of June every five years beginning 1 June 2019.
- x. The maximum time within which Ashford Borough Council will make a decision on whether to accept or reject an Expression of Interest and notify the party that has submitted that Expression of Interest will be three months from the date of the end of the one month period during which the Council will accept the submission of an Expression of Interest.
- xi. The minimum and maximum period of time before any relevant procurement exercise begins will be from the date of acceptance of an Expression of Interest to 12 months thereafter.
- xii. That the decision on whether to accept, reject or modify an Expression of Interest should be delegated to the relevant Head of Service, in consultation with the Council's Head of Legal and Democratic Services and the relevant Portfolio Holder.

General

- xiii. To delegate authority to the Head of Community and Housing to prepare, publish (including publication on the Council's website) and maintain the Council's Contracts Register which will include details of the time frames when expressions of interest may be submitted in relation to a service covered by a Council contracts. This will ensure that those thinking of using the Right to Challenge know when they can submit an expression of interest.
 - xiv. To delegate authority to the relevant Head of Service in consultation with the Head of Legal and Democratic Services to refuse to consider and Expression of Interest submitted outside of the Council's published time frames for the acceptance of the submission of an Expression of Interest⁴.
 - xv. To amend the terms of reference of the Appeals Committee so as to exclude appeals in relation to the rejection of expressions of interest. This is because there is no requirement in the Localism Act to offer any right of appeal.
8. Cabinet is advised that the Head of Community and Housing will keep and maintain a Register of Accepted Expressions of Interest so that there is a record of every successful Expression of Interest requiring a party to be notified of the commencement of a procurement exercise.

⁴ S.82(4) of the Localism Act

9. Cabinet is advised that the Head of Community and Housing will publish on the Council's website details of the maximum time within which Ashford Borough Council will make a decision on whether to accept or reject an Expression of Interest and notify the party that has submitted that Expression of Interest, this being three months from the date of the end of the relevant one month period during which the Council will accept the submission of an Expression of Interest⁵, and also details of the relevant time frame for the commencement of a procurement exercise in relation to a successful Expression of Interest⁶.

Risk Assessment

9. If the council does not put in place flexible, responsive and appropriate policy responses to manage the process by which it accepts the submission of Expressions of Interest under the Community Right to Challenge then there is a risk to both ongoing contractual arrangements and wider service-planning processes.

Equalities Impact Assessment

10. The Right to Challenge is government legislation, and as such the main impact assessment on the legislation itself was undertaken by the government. It is not anticipated that the recommendations within this report will have a disproportionately adverse impact on any group with protected characteristics.
11. In setting its time periods for responding to the Right, the council must weigh up the impact of these on the council, and take into account current contractual obligations and the needs of interested parties. In doing so, and in keeping the council's response to the Right under review (presenting amendments such as those included in this report) the council continues to mitigate the risk of disproportionate burdens being placed upon both the council and those wishing to exercise the Right.

Other Options Considered

12. N/A. Preserving the status quo is an option but the current policy and procedure has been found to be unworkable in relation to services that are contracted out. More frequent time frames for the submission of Expressions of Interest is something that has also been considered however, this will not bring with it the benefits to the Council that the proposed policy does whereby the Council can focus its efforts and allocate resources efficiently so as to deal with all submitted Expressions of Interest at the same time.

⁵ S.84(5) of the Localism Act

⁶ S.83(6) of the Localism Act

Consultation

13. N/A

Portfolio Holder's Views

14. The Community Right to Challenge offers a useful new avenue for the Council and community groups to come together to develop new, more effective, ways of working. It is therefore crucial that we have a robust framework to respond even-handedly to any expressions of interest received so that we offer the opportunities for these groups to contribute whilst not unduly impact on contractual arrangements which are already in place, and I endorse the approach taken by this report.

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