

Community Involvement in Service Delivery

Corporate and Environmental Overview and Scrutiny Committee



The Review

The aim of the work programme is to consider potential for community groups, including Parish Councils, to take on certain services currently provided across the Borough by WLBC

Aims for this evening

To understand the potential legal and procurement barriers that may be encountered in relation to the transfer of services to the local community.



Transfer of Services?

- What do we mean to cover
- Services only?
- Assets?
- Resources?
- Financial support?



Governance

- Decision making (internal) process
- Due diligence
- Sustainability of the arrangements proposed



“Social Value Act”

- The Council must consider how each *public service contract* it proposes to procure can *improve the economic social and environmental well-being* of West Lancashire
- Not for works or supplies (but some)
- Covers EU level services – level approx. over £164K
- First consideration in process of relevant procurements
- Processes within the Council



Community Right to Challenge

- The Localism Act 2011
- Designed to enable “communities and bodies that represent them who have innovative ideas about how services could be shaped to better meet local needs or could be run more cost effectively”
- Obliges local authorities to consider an expression of interest in providing or assisting in providing a service provided by or on behalf of the local authority submitted by a voluntary or community group, a charity or Parish Council
- Where challenge made and accepted by a local authority it will trigger a procurement process which will allow the body to bid to provide service alongside other bidders.



Procurement

- Public procurement is the purchase of goods, works or services by public sector bodies
- Legal framework is intended to ensure that contracts are awarded fairly, transparently, & without discrimination on the grounds of nationality and all potential bidders are treated equally.
- Public Contract Regs 2015 – light touch regime for healthcare, culture, education and recreation.
- Council rules – Contracts Procedure Rules



State Aid

- Must ensure that the Council avoids inadvertently granting state aid.
- Can be resource in any form whatsoever that distorts or threatens to distort by favouring certain undertakings.
- Exemptions – general block exemption and de-minimis



Powers

- S123 Local Government Act 1972 – local authorities have powers to dispose of land in any manner they wish.
- Section 111 LGA 1972 – do anything calculated to facilitate, conducive or incidental to the discharge of functions.
- Enables local authorities to enter into contracts (Local Government (Contracts) Act 1997 – services works and land contracts covered by the 1997 Act).
- S1 Localism Act 2011 – “general power of competence”
- Improved position for local authorities as compared to earlier legislation.



Ultra Vires

- Means “beyond the powers”
- Council can only do those things that it is empowered to do via statute
- Must in all cases be statutory authority for what is done and that authority must be either expressly given or reasonably inferred from the language of an act of parliament.
- Even though the Council has power to act in a particular way its actions may be susceptible to judicial review if it exercises a particular power in a manner contrary to the intention of the statute
- Particular statutory rights to challenge too, e.g. PCR 2015



The Council's land estate

- is made up of a diverse collection of land and property ranging from grass verges to development sites
- small industrial units to West Lancashire Investment Centre
- Shopping centres
- community centres, meeting rooms and playing fields



Title issues

- method of acquisition often determines the use to which authority is able to put the asset as some are burdened with restrictive covenants
- others are bound by conditions such as the former Langtree estate bought from money from North West Development Agency and which has stipulation that income produced must be used for economic regeneration or to enhance employment opportunities.
- large tranches were passed to the Council from the Commission for New Towns and are subject to clawback payments on disposal.



What is a disposal?

- Freehold transfer
- Grant of term exceeding 7 years or
- Assignment of a term which at the date of assignment has more than 7 years still to run.
- Transfers to community groups (eg meeting rooms) tend to be long full repairing leases at peppercorn rent.



Best Value

- Applies across all Council services – economy, efficiency and effectiveness in exercising its functions (LGA 1999)
- S123 Local Government Act 1972 - disposal of land must be for best consideration reasonably obtainable
- Main consideration in determining what constitutes best value is commercial value of disposal
- Unless Secretary of State consents to a disposal at less than best consideration (where undervalue does not exceed £2million and Council considers that the disposal will help secure the promotion or improvement of economic, social or environmental well being of its area).



Other matters on land disposal

Disposal of public open space S123(2A) Local Government Act 1972

Statutory procedure – advertise intention to dispose for 2 consecutive weeks in local newspaper and consider any objections received.

Appropriation of land

Assets of community value



Maintenance issues

- Council's assets have a monetary value.
- Can't be guaranteed that the transfer of the land will reduce the Council's liabilities in terms of maintenance costs.
- If tenant fails to maintain or allows asset to fall into disrepair then Council would suffer a financial loss.
- Lease/contract allows the Council to impose a measure of control over the usage and treatment of asset.
- Should periodic inspections (annual) be carried out to identify deteriorating fabric/utilities? Often leases are longer in term than commercial leases and therefore disrepair is not monitored in the same way.



Other issues to consider:

- Risk transfer
- Staff – pensions, T&Cs etc
- Health & Safety
- Risk assessments
- Insurance
- Ongoing monitoring

