

FINANCE AND CORPORATE SERVICES PORTFOLIO DECISION SCHEDULE



17 April 2013

at 3.00 p.m.

in Committee Room C, Civic Centre, Hartlepool

Councillor Paul Thompson, Cabinet Member responsible for Finance and Corporate Services will consider the following items.

Also invited:

Councillors: C Akers-Belcher, Dawkins, Jackson, James, A Lilley, Payne, Richardson, Simmons, Wells and Wilcox.

1. KEY DECISIONS

No items

2. OTHER ITEMS REQUIRING DECISION

- 2.1 Commissioning and Procurement Strategy 2013-2014 – *Assistant Director (Resources)*
- 2.2 Localism Act 2011 - Community Right to Bid – *Assistant Director (Resources)*

3. ITEMS FOR INFORMATION

- 3.1 Delegated Property Transactions – *Assistant Director (Resources)*

4. REPORTS FROM OVERVIEW OF SCRUTINY FORUMS

No items



FINANCE AND CORPORATE SERVICES PORTFOLIO

Report to Portfolio Holder

17th April 2013



Report of: Assistant Director (Resources)

Subject: COMMISSIONING AND PROCUREMENT
STRATEGY 2013-2014

1. TYPE OF DECISION/APPLICABLE CATEGORY

1.1 Non Key Decision.

2. PURPOSE OF REPORT

2.1 To provide an update and seek endorsement of the Commissioning and Procurement Strategy for 2013 - 2014.

3. BACKGROUND

- 3.1 Current Government legislation and regulations firmly identify the future role of Local Government to be that of commissioner of services, with service provision being obtained from the most economic, efficient and effective sources, whether they are within the public, private or voluntary sectors, and/or combinations or partnerships thereof. The thrust of the legislation is to improve outcomes for local people including the local economy.
- 3.2 The Council is seeking to deliver this strategy through its Corporate Procurement Team (CPT). The CPT will provide advice and support through the commissioning and procurement cycle as well as undertaking tendering exercises, utilising e-tender technology.
- 3.3 The Commissioning and Procurement Strategy was considered at the Portfolio meeting on the 13th March 2013 and deferred to seek the views of the Chairs of the proposed Policy Committees within the new governance arrangements.
- 3.4 The draft Strategy was circulated to the Chairs and a briefing session was held on 28th March 2013.

- 3.5 Comments from the briefing session and from the previous Portfolio meeting have been incorporated in this report and the Strategy itself. The relevant Members have been invited to this meeting to enable any further comments to be incorporated.

4. COMMISSIONING AND PROCUREMENT STRATEGY

- 4.1 The Commissioning and Procurement Strategy for 2013 - 2014 is attached to this report as **Appendix 1**.
- 4.2 The objectives of the Strategy need to be strategically aligned with the Council's priorities as detailed in the 2012/13 Corporate Plan. These priorities are described in the following extract from the Corporate Plan:

'Priorities

Overall Aim/Vision

The Council's overall aim remains: -

"To take direct action and work in partnership with others, to continue the revitalisation of Hartlepool life and secure a better future for Hartlepool people".

The Council's aim is based on the Hartlepool Partnership's new long term vision, agreed in July 2008, looking 20 years ahead is: -

"Hartlepool will be a thriving, respectful, inclusive, healthy, ambitious and outward looking community, in an attractive and safe environment, where everyone is able to realise their potential."

- 4.3 The Commissioning and Procurement Strategy describes:
- the current situation in relation to national, regional and local procurement activities,
 - commissioning and procurement at Hartlepool Borough Council,
 - the Council's approach to corporate and social responsibility in the context of its procurement activities;
- and
- provides useful information to procurers by describing the various procurement processes available to officers and how to decide which one to follow.

4.4 Procurement at Hartlepool Borough Council

This part of the strategy explains where responsibility and accountability sits amongst the various parties involved in Council procurement, from Members

to senior management through to those involved in operational procurement activities.

Following on from this, the strategy describes what is meant by commissioning and procurement and the impact these activities have on important stakeholders and areas of spend, i.e. the Voluntary and Community Sector (VCS) and Public Health Commissioning.

To support officers in their procurement activities, a quick guide to the various procurement routes open to officers is provided in the strategy's appendices.

The strategy describes the procurement principles to which the Council adheres, designed to ensure that we maximise the benefits our procurement activities can deliver and support the Council's priorities in terms of health and safety, equality and sustainability.

The strategy also covers a range of general issues and activities, stating the Council's approach, for example, around how we will interact with suppliers, stakeholders and collaboration partners. In the current economic climate where Council's have to look critically at the services they deliver the strategy focuses on the issue of service delivery options appraisal, describing the range of options available and expanding into the decision making process which surrounds options appraisal in an attached appendix.

4.5 Corporate and Social Responsibility

This part of the strategy starts by focussing on recent legislative changes which impact upon the Council and its procurement practices, i.e. the Public Services (Social Value) Act 2012 and the 'Right to Challenge' element of the Localism Act. The strategy describes in broad terms the actions the Council will have to take to comply with this legislation and look for local benefits that can be derived from and by suppliers.

The latter part of this section describes the actions the Council has taken to support local businesses, both through the development of its own Contract Procedure Rules and also through its use of e-procurement technology.

5. FEEDBACK FROM POLICY COMMITTEE CHAIRS

5.1 Social Value

There is a common thread of social value questions to be built into relevant procurement projects and this should be taken into account during the whole end-to-end commission and procurement cycle. Social value should be measured throughout the contract.

5.2 Price/Quality

Price/quality splits in tender evaluation will be carefully considered to get the right balance, particularly where the price is fixed.

5.3 Staff Training/Development

There is a need for training in new (and old) processes to ensure consistency and compliance and to meet the objectives and principles of the Strategy.

5.4 Member Training/Development

There is a similar need for Members and this could be built into the new governance transition.

5.5 Local Economy

There is still a priority wherever possible to promote the local economy in the Council's procurement processes.

5.6 Commissioning and Procurement Teams

Members advocated the bringing together of Commissioning and Procurement teams across the Council to achieve consistency and maximum efficiency.

5.7 Contract Management

This element of the procurement process needs to be emphasised and undertaken in such a way that it secures performance but also informs future specifications, procurement strategies and supplier choice. This may be assisted by the bringing together of Commissioning on Procurement teams across the Council. It would also assist in reviewing our own processes and checking whether they provided the required outcomes.

5.8 North East Procurement Organisation (NEPO)

The current review of the organisation was welcomed. It was felt that we need to maximise the Hartlepool approach and have a joint approach on a focused number of areas that can make a difference rather than NEPO trying to do everything.

5.9 Contract Extensions

Contract Procurement Rules need to control the need and request for extensions to contracts where they can be avoided.

6. FINANCIAL CONSIDERATIONS

- 6.1 Whilst the Strategy itself has no financial implications, the delivery and implementation, through individual procurements must produce the best value for the Council and delivery savings wherever possible.

7. LEGAL CONSIDERATIONS

- 7.1 The Strategy sits alongside the need to comply with EU and UK Procurement regulations and the Council's Contract Procedure Rules which protect the Council and individual officers.

8. EQUALITY AND DIVERSITY

- 8.1 The Strategy covers the requirement to be open and transparent in any commissioning and procurement that the Council undertakes.

9. ASSET MANAGEMENT

- 9.1 There are no asset management implications.

10. STAFF ISSUES

- 10.1 There are no staffing implications in relation to the strategy itself but individual procurement decisions can have implications which need to be addressed on a case-by-case basis.

11. SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS

- 11.1 There are no implications.

12. CONSIDERATIONS

- 12.1 The Portfolio Holder is the Council's Procurement Champion and it is therefore important that updates and developments are considered at appropriate times.
- 12.2 This strategy is currently undergoing a consultation process across the Council and, whilst a small amount of feedback is still outstanding, represents the views and priorities of the Council.

- 12.3 The Strategy will be shared with officers, Members our suppliers and partners and will be available on the Council's Website. Training and briefing sessions will be arranged with key groups.

13. RECOMMENDATIONS

- 13.1 That Portfolio Holder endorses the Commissioning and Procurement Strategy for 2013 – 2014.
- 13.2 The Portfolio Holder is asked to acknowledge that the endorsement is given on the basis that further minor amendments may be made to the document by the Assistant Director (Resources) to accommodate any appropriate feedback received following completion of the consultation.

14. REASONS FOR RECOMMENDATIONS

- 14.1 To update the previous strategy, ensuring that developments in legislation which have an impact on the Council's commissioning and procurement activities are incorporated into the Council's methods of operation.

15. BACKGROUND PAPERS

- 15.1 None

16. CONTACT OFFICER

Graham Frankland
Assistant Director (Resources)
Regeneration and Neighbourhoods
Civic Centre
Victoria Road
HARTLEPOOL
TS24 8AY

Telephone: 01429 523211
E-mail: graham.frankland@hartlepool.gov.uk

1.	INTRODUCTION	9
1.1	National Context.....	9
1.2	Regional Context	10
1.3	Local Context	11
2.	PROCUREMENT AT HARTLEPOOL BOROUGH COUNCIL.....	11
2.1	Implementation Responsibility And Accountability	11
2.1.1	Corporate Management Team.....	11
2.1.2	Members	12
2.1.3	Heads of Service, Managers and Team Leaders.....	12
2.1.4	Corporate Procurement Team	12
2.2	Efficient And Effective Commissioning And Procurement	13
2.2.1	Definition of Commissioning and Procurement.....	13
2.2.2	Purpose of Commissioning and Procurement	14
2.2.3	Voluntary and Community Sector (VCS) Strategy	14
2.2.4	Community Pool.....	15
2.2.5	Public Health Commissioning.....	15
2.3	Objectives	16
2.3.1	Procurement Principles	16
2.3.2	Procurement Policies, Procedures And Eu Directives	17
2.3.3	Analysis Of Spend	18
2.3.4	Procurement Option Appraisal (Services).....	18
2.3.5	Contract Specification	19
2.3.6	Evaluation Of Tenders	19
2.3.7	Capital Assets And High Risk Procurement Projects	20
2.3.8	Collaboration And Shared Procurement	20
2.3.9	Risk	21
2.3.10	Business Continuity.....	21

3. CORPORATE & SOCIAL RESPONSIBILITY	22
3.1 Sustainability And Social Goals	22
3.2 Public Services (Social Value) Act 2012.	22
3.3 Localism Act 2011 – “Right To Challenge”	22
3.4 Developing The Local Economy And Voluntary Sector	23
3.5 E-Procurement.....	24
3.6 E-Procurement Of Common Commodities.....	24
3.7 Equalities And Supplier Diversity.....	24
3.8 Local Suppliers	25
3.9 Contract And Supplier Management.....	25
Appendix 1 OPTIONS APPRAISAL	27
1. Withdrawal.....	27
2. Improved internal service management.....	27
3. Joint commissioning.....	28
4. Market testing.....	28
5. Externalisation (1)	29
6. Externalisation (2) A contract supplemented by a formal “partnership” arrangement.....	29
7. Transfer	30
8. Hybrid options.....	30
Appendix 2 PROCUREMENT ROUTES	32

1. INTRODUCTION

1.1 *National Context*

In its May 2010 Spending Review, the Coalition set out a programme of savings to be made throughout Government, including through the renegotiation of contracts with major suppliers, which naturally has a 'knock-on' effect into the Local Government sector.

The Government have identified that it is becoming increasingly important for decision makers to challenge the assumption that 'big is best' in procurement contracting and to consider new and better ways of purchasing Government goods and services with SME's.

The Government has recognised the potential of small and medium enterprises (SME's), which account for 50% of turnover in the UK economy but only win around 6.5% of procurement contracts, and has set out a plan for increasing this share to 25%.

In addition to the above, the Local Government Association (LGA) have identified that Council spend in the private and voluntary sectors is worth over £62bn each year. Councils recognise the need to maximise the opportunities that procurement provides in ensuring value for money, and in helping support their local economy. This is particularly so as councils wrestle with an average 28% reduction in their funding during the current Spending Review period, as well as the wider economic downturn.

The changing landscape of council contracting arrangements includes increasing numbers of shared service arrangements, pooling of resources and working with a range of providers. Reductions in funding mean that councils are seeking better value for the tax payer as services are reconfigured, and there is more co-production with citizens and the voluntary sector.

After consultation the LGA has launched a Local Government Procurement Pledge to highlight the sector's commitment to greater collaboration with business, SME's and the voluntary sector, to help drive improvements and efficiencies in how councils procure goods and services.

The pledge makes the following commitments on behalf of the Local Government sector:

Local government will use all efforts to use procurement to help:

- Deliver value for public money
- Drive local social and economic growth and regeneration
- Provide inclusive services through a diverse supplier base.

To this end we pledge to increase our efforts:

- to promote and implement procurement processes that are less bureaucratic and burdensome,
- to build our skills, capacity and expertise in procurement,

- to engage effectively with users, citizens, community organisations and partners to ensure that the goods and or services being procured meet their needs and where appropriate involve them in the procurement process,
- to engage effectively with suppliers through market days, pre-procurement dialogue, and provide transparent feedback, making them aware of trading opportunities and securing their input and expertise,
- to use procurement in a socially and environmentally responsible way, promoting fair employment practices, ethical sourcing practices, and environmental sustainability wherever possible,
- to engage with the Chambers of Commerce and the Federation of Small Businesses, voluntary sector representatives (as set out in their voluntary sector Compact) and other representative trade & industry bodies,
- to seek feedback from suppliers and use this learning to further improve procurement processes,

and;

- to promote collaborative working where appropriate using the Professional Buying Organisations; Government Procurement Service and others to make best use of existing expertise, resources, and to share best practice

In addition to the above, the Public Services (Social Value) Act 2012 has been introduced. The Act requires public authorities to consider a range of issues around how the letting of a contract might improve economic, social and environmental wellbeing. Whilst the scope of the Act is limited to services contracts with a value in excess of the prevailing EU Public Procurement threshold, Hartlepool Borough Council fully supports the aims of the Act and will, additionally, endeavour to implement its principles and practices, where appropriate, for contracts with a value below the prevailing EU Public Procurement threshold.

As described above, Hartlepool Borough Council, like so many other Council's, face challenging financial issues as a result of current economic conditions. These pressures have added real urgency to the efficiency agenda and the need to look at new ways of delivering public services and ensuring that all third party spend is necessary, efficient and gives value for money.

1.2 Regional Context

Hartlepool Borough Council continues to work collaboratively with other public bodies, and not just within the Local Government sector. We are active members of the North East Procurement Organisation (NEPO) and also work closely, although on a more informal basis, with our fellow Tees Valley Local Authorities.

By working collaboratively to develop new regional and local supply arrangements we have been able to develop closer working relationships and use new leverage, knowledge and expertise in our own procurement environment.

Work is currently underway in relation to a three borough collaboration which may yet result in even closer working relationships with Darlington and Redcar &

Cleveland Borough Councils with possible extension to other Tees Valley Authorities where appropriate.

1.3 Local Context

The status and importance of procurement in the public sector is growing and there is increasing pressure on the Council to improve procurement performance for a number of reasons. Most importantly:

- Procurement has a critical role to play in supporting the Council's need to improve value for money and service performance.
- It is critical that the optimum procurement routes and the 'whole life' costs of a contract are considered.
- Through the application of the above, savings are realised, enabling the released funds to be channelled into priority services or into reducing the Council's net capital and/or revenue expenditure.
- As a public body, the Council is required to comply with the EU Public Procurement regulations and is accountable for achieving best value
- Implementation of e-procurement processes is a key element in improving procurement efficiency.
- The Council seeks to improve the local economy by stimulating and encouraging opportunities for local businesses, making use of the opportunities the Public Services (Social Value) Act 2012 affords, with regard to tender evaluation and subsequent contract award.
- The Council has a role to play in structuring its requirements in such a way that the local Voluntary and Community Sector are not prevented, albeit within the limitations of the Council's resources, objectives and requirements, from competing for Council funding and contracts.

2. PROCUREMENT AT HARTLEPOOL BOROUGH COUNCIL

2.1 Implementation Responsibility and Accountability

2.1.1 Corporate Management Team

The Corporate Management Team, through the Assistant Director (Resources) – Regeneration and Neighbourhoods as the corporate lead for Procurement, is responsible for owning, leading, driving and challenging services to implement the procurement strategy and to ensure its success.

2.1.2 Members

To provide political commitment to this strategy, the Finance and Policy Committee has lead responsibility for procurement and will ensure that procurement is recognised and proactively considered in the political processes of the Council and its partners.

2.1.3 Heads of Service, Managers and Team Leaders

Operational responsibility for procurement of a value less than £60k (or £100k for Works) rests with individual managers throughout the Council. They manage and undertake procurement activity in line with the strategy and acting within the Contract Procedure Rules (CPR's) specified in the Council's Constitution. They are expected to implement any good practice guidance provided by the Corporate Procurement Team and to contribute to the sharing of information around good practice, to improve the procurement performance of the Council.

Departmental commissioners and procurers are also responsible, as budget holders and Client managers, for development of specifications, development of contract conditions particular to the service/products/works required, and following contract award, for the ongoing management of the contract.

2.1.4 Corporate Procurement Team

The team has responsibility for managing all tender activity and all EU tenders. The team also advises service areas on issues around smaller value quotes.

The team provides an interface between the Council and the collaborative procurement partners it engages with.

The team is responsible for ensuring that all Council spend is compliant with EU Procurement Regulations.

The Corporate Procurement team are also responsible for the development of contract conditions for corporate contracts, and following award, for the management of the corporate contract.

In addition to procurement activities, the team also provides bid management services for areas of the Council tendering to win business with other organisations and a disposals service.

2.2 ***Efficient and Effective Commissioning and Procurement***

2.2.1 **Definition of Commissioning and Procurement**

The starting point for the Commissioning and Procurement strategy are the definitions of Commissioning and Procurement.

COMMISSIONING

Commissioning can be defined as:

“The process for deciding how to use the total resource available in order to improve outcomes in the most efficient, effective, equitable and sustainable way”. It includes the whole cycle of planning from assessing needs, designing services and securing and funding delivery.”

Commissioning covers the activities and processes used by the Council in making decisions about how best to provide a wide range of services, for example children’s services, adult services or health services.

PROCUREMENT

The term 'Procurement' has a far broader meaning than simply purchasing, buying or contracting. It is about securing services, products or building works that best meet the needs of users and the local community in the widest sense. It incorporates the 'Whole Life' approach to assets or service contracts, dealing with every stage from the initial definition of needs, through to the end of the useful life of the asset or service contract.

The National Procurement Strategy for Local Government defines procurement as "The process of acquiring goods & services to meet the customer's requirement while achieving the optimum combination of whole life costs & benefit". For the purposes of this guidance 'Procurement' is defined as any form of arrangement entered into by Council officers for:

- The supply or disposal of goods or materials.
- The hire, rental or leasing of goods or equipment.
- The execution of works.
- The delivery of services, including those offered by consultants.

These definitions demonstrate the differences between commissioning and procurement. The Council has the option to award grants as an alternative to executing a competitive tendering process, the decision around which route to use being made based upon knowledge of the service to be delivered and the marketplace available to deliver the service.

2.2.2 Purpose of Commissioning and Procurement

Commissioning and Procurement is at the heart of everything that the Council does to achieve its objectives at every level.

It covers the process of acquiring goods and commissioning services and works either from third parties or through in-house sources and covers the entire cycle from identifying needs through to the end of a contract. It is important that the Council sets clear rules for the procurement of these goods, services and works to ensure that procurement is carried out with openness, integrity and accountability, that the probity and transparency of the process is evidenced and that the Council is fulfilling its responsibilities.

The Council recognises that procurement is not the responsibility of one team, but requires an organisation-wide approach.

The decision making process with regard to the various procurement routes is detailed in Appendix 2.

It is important to note that there is an explicit requirement that, where they exist, in-house services are used for the provision of goods, services and works. As a result of the services being delivered by in-house resources, there is no procurement process to follow, a potential cost saving in itself.

2.2.3 Voluntary and Community Sector (VCS) Strategy

Outside of its commissioning activities in relation to social care, children's services, and adult's services the Council also commissions services from the Voluntary and Community Sector (VCS) and has sought to describe its relationship with the sector through the development of its VCS strategy.

The Council adopted its VCS strategy in late 2012, combining the former Hartlepool Compact and Voluntary Sector Strategy into one comprehensive document. Developed in partnership with public sector partners and the VCS, the document clearly outlines the Council's commitment to the commissioning process when working with the VCS and the implications that this may have in terms of capacity, skills, training and resources. The shared undertakings outlined within the 3 objectives of the strategy form the basis of the working relationship between partners whilst informing the commissioning processes that the Council adopts. These objectives are as follows:

- Have a say
To ensure that voluntary and community sector organisations are able to comment on and influence public sector strategies and service delivery plans, in order to develop more reliable and robust policies and strategies that better reflect the community's needs and wishes.
- Take Part and Deliver

To improve the relationship between public sector partners and the VCS within Hartlepool in managing and using resources to achieve a strong and prosperous VCS that contributes to the delivery of good public services within the town.

- Strengthen and Develop

To ensure a strong and diverse VCS that promotes inclusion across the town as well as a clearer understanding of community groups within the sector as a whole. The VCS is able to get involved, build capacity and develop, strengthening the local communities that they serve.

2.2.4 Community Pool

One tangible element of the VCS strategy is the Council's 'Community Pool' arrangement. This is a pool of funding which is targeted at specific Council priorities and these are addressed by undertaking competitive procurements for each. There is a general fund which forms part of the pool and this provides an opportunity for organisations to apply for grants to support their work. Clearly any grants awarded do not duplicate the work supported by other contracts let by the Council.

2.2.5 Public Health Commissioning

The government has reorganised the way public health services are delivered in England.

At a National level this has resulted in the creation of a new body, within the Department of Health, called Public Health England and at a local level, health improvement functions have moved into local authorities (LAs) and will be allocated a ring fenced budget.

As a result of this reorganization, the Council now has responsibility for the commissioning of Public Health contracts, an activity which will be managed and organized by the Council's Director of Public Health with support being provided by the Council's Corporate Procurement Team.

2.2.6 Tactical Procurement Strategies

There are a variety of tactical procurement strategies which the Council can employ. The choice of which strategy to pursue affects the procurement route to be followed, the scope of a contract, the scale of a contract etc. All of these decisions impact upon the suppliers in the marketplace and can either encourage, discourage or even prevent suppliers from bidding for Council work.

As a result of the importance of these decisions, officers are required to record details of and the rationale behind the procurement strategy to be employed. As a minimum, the details must include the following:

- Scope of the contract
- Reasons for tender packaging and structure of lots
- Basis of any price/quality split to be used in the evaluation process
- Contract extensions

To ensure that these decisions are available for review, this information will be retained for audit purposes and in the event that the relevant Policy Committee requests a review of the procurement process.

Further information on the issues which impact upon the chosen procurement strategy is described in the Council's Contract Procedure Rules.

2.3 Objectives

The objectives of the Corporate Procurement Team are strategically aligned with the Council's priorities as detailed in the 2012/13 Corporate Plan.

These priorities are described in the following extract from the Corporate Plan:

'Priorities

Overall Aim/Vision

The Council's overall aim remains: -

"To take direct action and work in partnership with others, to continue the revitalisation of Hartlepool life and secure a better future for Hartlepool people".

The Council's aim is based on the Hartlepool Partnership's new long term vision, agreed in July 2008, looking 20 years ahead is: -

"Hartlepool will be a thriving, respectful, inclusive, healthy, ambitious and outward looking community, in an attractive and safe environment, where everyone is able to realise their potential."

2.3.1 Procurement Principles

Procurement activity supports the Council's aims and priorities in several ways:

- a) Where services are delivered via third parties, we will implement contractual solutions which enable the Council to ensure that our suppliers provide high quality public services which meet the needs of residents and improve the quality of life of the community.

- b) Wherever possible we will contribute to the revitalisation of Hartlepool life by providing opportunities to local suppliers to supply to the Council, without compromising the drive to obtain best quality at optimum cost.
- c) We will assist in controlling costs by cost effective procurement, through ensuring the best possible commercial deals with suppliers and the development of cost effective procurement processes, operated in accordance with EU directives.
- d) We will endeavour to work only with suppliers with clear policies supporting equality and diversity and who oppose any form of prejudice and discrimination.
- e) We will ensure that suppliers have appropriate health and safety policies, processes and procedures in place to ensure the safe delivery of products and services, thus contributing to a safer community.
- f) We will endeavour to ensure that sustainability issues are fully taken into account in sourcing products and services to protect and improve our environment.
- g) Where suppliers aspire to improve their policies, processes and procedures we will work with them to help them achieve this aspiration.

2.3.2 Procurement Policies, Procedures and EU Directives

1. Procurement is governed by the Council's Contract Procedure Rules. In order to assist major procurements and to ensure that the above principles are adhered to, the following protocols will be adhered to:
 - We will provide potential suppliers with clear specifications of our requirements at the earliest possible stage and ensure these are understood.
 - For high value purchases (over the EU procurement thresholds) we will always publish our tender evaluation criteria at the tender stage to make clear to prospective suppliers how we intend to select the preferred supplier. We will follow and keep up to date with legislation and provide continuous learning opportunities for procurement staff.
 - The EU Remedies Directive came into force on 20 December 2009 and affects all procurement activity after that date. The directive provides rights to an unsuccessful tenderer to pursue the Council for damages if the Council has failed to comply with the EU Procurement legislation. The Council's constitution requires any tendering that exceeds the EU threshold to be managed by the Corporate Procurement Team to reduce any contractual or supply risk transferring to the Council.
 - We will offer to provide feedback (in writing or face to face) all parties to a tendering process as to why they were or were not successful.
 - Contracts will only be placed on the Council's standard terms and conditions or appropriate industry standards (e.g. JCT/NEC for works contracts), except with the authority of the Council's Legal Services section.

- The Council will work collaboratively with other regional and sub-regional procurement groups in order to be able to deliver best value to the Council taxpayer.
- The Council has implemented an electronic procurement system and will continue to embed this and expand its use and functionality wherever possible.

2.3.3 Analysis Of Spend

Expenditure analysis is an ongoing activity to inform the Council's areas of focus, including identifying opportunities to aggregate and contract for areas of spend currently 'below the radar'. Procurement arrangements in all these areas offer opportunities to develop new supply arrangements through local suppliers and support the local economy.

2.3.4 Procurement Option Appraisal (Services)

There are seven approaches that local authorities can take when choosing an appropriate service delivery option. These are:

- Withdraw from the activity. This is not likely to be possible for most major areas of the authority's activity. However, it may be possible for aspects of a service. It is clearly possible where the authority has powers rather than a duty to do things.
- Provide the service through an improved in-house approach. There will still need to be improvement targets and a plan for how they will be reached. There will still be public monitoring of service delivery.
- Joint commissioning involves joining with other local authorities or public bodies to jointly provide or purchase services. It can include delegation of powers to another authority, pooling of budgets, working with other government agencies, or arrangements with non-profit organisations.
- Market testing i.e. competition with an in-house bid.
- Externalisation i.e. competition without an in-house bid.
- Transfer includes circumstances where the authority's client role is passed to another organisation. This may be a not for profit organisation, such as a housing or community association, or a public/private partnership such as Joint Venture Company. In these cases the authority retains a residual interest (rights to nominate people to use the service, a seat on the board) as in housing stock transfers or some transfer of leisure services, or minority shareholding, as in the case of joint-venture companies.

This situation could become more commonplace as a result of successful challenges through the community right to challenge facility provided through the Localism Bill (described later in this document).

- Hybrid options. In reviewing a service or function the authority must consider whether to break up activities currently treated as a single service or delivered through a single contract, and, equally, to consider whether to amalgamate services currently delivered separately. Where a service includes a variety of different types of activity, the option most likely to deliver best value may well be different for different activities. In such cases, the best value choice will involve different choices for different parts of the service and will be led by the Council's service commissioners who have expertise in relation to the services required and the marketplaces which exist to deliver these.

Appendix 1 of the document provides a summary of the circumstances which will influence the choice of procurement route.

2.3.5 Contract Specification

In order to achieve maximum benefits from contracts with third parties, the Council will focus on improving the specification for contracts and the terms of the contracts.

It will seek specialist advice on the drafting of its major contracts and improve the drafting skills of its staff. Where appropriate it will consider innovative contractual arrangements which provide the flexibility to respond to changing needs over the term of the contract.

The Council will continue to make use of the north east council's harmonised tender documents in order to help simplify our processes for potential suppliers.

2.3.6 Evaluation of Tenders

Evaluation of tenders will be conducted in accordance with the latest EU directives, relevant case law and Government Procurement Service (GPS) guidance will be based strictly on criteria and the respective weightings published in the tender documentation.

The use of evaluation criteria will be proportional to the size of the procurement. For lower cost requirements simplified criteria can be applied, however, depending on the complexity and level of risk associated with the contract, it may be deemed necessary to use more sophisticated criteria.

Wherever possible the Council will seek to award contracts on a competitive, most economically advantageous basis and, where appropriate, an evaluation and comparison of whole life costs will be performed and considered in making award recommendations.

Where the Council elects to use a price/quality evaluation split, this will be defined prior to the procurement commencing and an agreed marking mechanism will be developed which describes the ratio. Decisions taken with regard to the price/quality split ratio will be appropriate and justifiable.

Price/quality splits in tender evaluation must be carefully considered to get the right balance, particularly where the price is fixed.

2.3.7 Capital Assets and High Risk Procurement Projects

In the event that the Council does not have the necessary in-house expertise to manage the procurement of major capital assets and/or high risk service projects, it will appoint subject matter experts to advise it on the procurement as required to ensure optimal value for money and risk management.

The Council recognises that procurement should not end with the provision of the capital asset or award of the service contract but involves the whole-life cost and it uses whole-life cost analysis to support bid analysis and comparison, including, where appropriate, disposal costs.

2.3.8 Collaboration and Shared Procurement

Hartlepool Borough Council (HBC) is a member of NEPO (the North East Procurement Organisation), along with the other 11 regional Council's. In addition, HBC works closely with the other Councils in the Tees Valley sub-region, through the Tees Valley Joint Procurement Group (TVJPG).

NEPO is a shared resource funded through Local Authority subscriptions. It provides a range of services to its members including management of the region's e-procurement portal, which is used extensively across HBC, and a range of contracts for generic goods and services used by Council's across the region, e.g. gas and electricity, food, stationery etc.

Currently NEPO's funding model provides a rebate to Council's based upon the value of the transactions each Council has made against NEPO contracts. HBC use this rebate to part fund the Corporate Procurement Team.

On a less formal basis, HBC also works with other Council's in the Tees Valley through the TVJPG. This collaboration takes the form of a monthly meeting at which the respective Council's Heads of Procurement meet and develop ideas and opportunities for collaborative contracts. Typically the contracts will be frameworks developed by one of the group with an allowance included for other authorities in the sub-region to use the arrangement should it suit their purposes to do so.

There is no direct funding provided to this group and attendance at meetings and subsequent contracting activities are absorbed within current resources.

In addition to these collaborative activities there is an additional area of work relating to wider collaboration between Hartlepool Borough Council, Redcar & Cleveland Borough Council and Darlington Borough Council.

2.3.9 Risk

The Council will make sure that any risk to the authority or the community it serves is properly recognised in all its procurement dealings. It will identify risks, evaluate their potential consequences and effectively manage those risks accordingly at every stage of procurement.

Risk in procurement is the potential exposure to financial, legal and reputational damage through either an unplanned event or unwanted outcome happening. In anticipating and managing risks the Council will carry out a thorough investigation of all risks prior to any procurement activity, to ensure that the appropriate sourcing strategy is chosen.

In terms of the Council's procurement process, most risks can be categorised in four areas, as follows:

- Strategic – e.g. long term impact of bad decision or poor implementation.
- Procedural – e.g. failure to comply with legislation, internal procedures, processes, codes.
- Legal – e.g. illegal or unethical practices or lack of documentation.
- Operational – e.g. poor contract management, failure to deliver, terms do not meet requirements/expectations.

It is important that these risks are recognised where they exist and measures taken to mitigate them.

2.3.10 Business Continuity

Business continuity is the process of preparing for and responding to a disaster event or situation that could have a serious impact on the delivery of the Council's services. All contracts for key service provision, or which support in-house services which are named in the Council's Business Continuity arrangements, have approved business continuity plans in place which will ensure continuity of service in the event of normal service disruption.

Depending upon the service being tendered, the Council will include a condition that bidders must provide details of their business continuity plans. Failure to have such plans in place may result in the rejection of an offer.

3. CORPORATE & SOCIAL RESPONSIBILITY

3.1 Sustainability and Social Goals

Hartlepool Borough Council recognises its responsibility to carry out its procurement activities sustainably: providing value for money and in an environmentally and socially responsible manner. Sustainable procurement safeguards the long-term interests of the communities in Hartlepool and this policy supports the delivery of Hartlepool's Community Strategy.

We recognise our role in encouraging our suppliers and contractors to minimise any negative impacts of their activities and to promote economic and community regeneration associated with the products and services they provide.

As part of our commitment to sustainability, we will consider whole-life costing wherever appropriate. This is achieved during the options appraisal stage of the procurement process where staff need to be aware of the true or whole life cost of the product.

In addition, where relevant and suitable, the Council will endeavour to secure commitment from bidders to offer training, apprenticeships etc. in the event they are awarded a contract. This approach has proved successful with construction type contracts.

3.2 Public Services (Social Value) Act 2012.

The Council has amended its CPR's to accommodate the requirements of the Public Services (Social Value) Act 2012.

The Act's purpose is to require public authorities to have regard to 'economic, social and environmental well-being' in connection with public services contracts and for connected purposes.

Hartlepool Borough Council will now consider, prior to undertaking the procurement process, how any services procured (whether covered by the Public Contracts Regulations 2006 or otherwise) might improve the economic, social and environmental wellbeing in areas which we exercise our functions. Social value should be measured throughout a contract. Furthermore we will consider how we can secure such improvements as part of the process.

3.3 Localism Act 2011 – “Right To Challenge”

Once a decision has been made to procure a service following acceptance of a challenge submitted under the 'Community Right to Challenge' legislation, the Council's Contract Procedure Rules come into effect.

As with all other procurement activities undertaken by the Council, the procurement procedure will be selected by assessing the value of the contract to be awarded.

Given the possible nature of the services subject to challenge, care will be taken to ensure that evaluation criteria are utilised which reflect the Council's obligation to secure Best Value and meet the requirements laid down in the Public Services (Social Value) Act 2012, i.e. to consider how the procurement can promote or improve the social, economic or environmental well-being of the authority's area.

In addition, care will be taken to ensure that Third Sector and Voluntary & Community Sector organizations are not excluded from bidding for services as a result of the Council incorporating requirements which are not proportional to the value of the service and any associated risks relating to public safety, service delivery, service continuity etc.

In addition to the above, any planned procurement activity will take into account any pre-existing contractual obligations the Council may have. This may result in decisions being required on whether to extend or terminate an existing contract.

3.4 Developing the Local Economy and Voluntary Sector

For the purpose of this strategy document, the term 'local supplier' refers to any company whose presence in the Borough of Hartlepool provides significant local benefits to the community, through employing staff, offering training opportunities and demonstrates a commitment to the local economy.

HBC is keen to support its local supply base and provides training workshops for local suppliers which can range from tendering workshops to sessions about certain elements of procurement.

HBC also provides support to local business organisations and has worked on several occasions with the Federation of Small Businesses (FSB).

HBC's procurement pages on its corporate website include a 'Selling to the Council' guide which is designed to make it easier for potential suppliers to do business with us.

Our constitution also requires that all sub-tender level business opportunities which are normally placed through a quotation-gathering process must include a minimum of 2 (where available) local suppliers on the list of bidders to be invited.

3.5 E-Procurement

The Council recognises that e-procurement provides significant opportunities for substantial expenditure savings, reduced transaction costs and improved operational efficiency.

All tenders are now carried out using the Council's e-procurement portal and all quotations over £2000 are also required to be managed using the e-procurement 'quick quotes' system.

The Council also makes extensive use of corporate purchase cards which provides an aggregated billing (one monthly invoice to create savings in transaction costs) facility, and stationery ordering is carried out using an on-line system.

3.6 E-Procurement of Common Commodities

Many of the goods and services procured by the Council are common to other councils. NEPO and the Tees Valley Joint Procurement Group (TVJPG) has become the main forum for jointly purchasing common commodities throughout north east or Tees Valley councils. In some cases, electronic reverse auctions can be used to achieve the lowest price against a pre-defined 'basket' of requirements.

The Council's strategy is to continue with this partnership with other councils wherever prudent, and to this end we maintain regular contact with NEPO and the TVJPG to identify when suitable opportunities arise.

3.7 Equality and Supplier Diversity

As a Council, we deliver services to customers and value our employees equally, irrespective of their ethnicity, gender, age, religion or belief, disability, sexual orientation or any other irrelevant factor. We recognise and value difference and respect our staff and service users as individuals.

To ensure that the Council procures goods, works and commissions services in a way which promotes equality and diversity, we strive to:

- have a fair and accessible procurement process
- make sure that where contractors deliver services on our behalf, they do so in a way which meets the needs of all our residents and/or employees

By being proactive in these two areas, the Council will help to achieve its vision of creating an ambitious, healthy, respectful, inclusive, thriving and outward-looking community, in an attractive and safe environment, where everyone is able to realise their potential.

We will also be meeting our statutory duties to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010 against individual's relevant protected characteristics.

The Council will ensure a fair and accessible procurement process by continuing to:

- simplify the guidance available to potential suppliers about how we procure goods, works and services
- make information about the Council's procurement opportunities more accessible including, for example, attending 'Meet the Buyer' events and updating information on the website
- engage with suppliers and provide training to them where appropriate.

When we use contractors to deliver services on our behalf, we will make sure that they do so in a way which meets the needs of all our residents and/or employees by:

- seeking information from tenderers about their equality and diversity policies and practices
- including equality and diversity clauses as a standard feature in contracts to ensure contractors meet relevant statutory duties

3.8 Local Suppliers

The Council sees the promotion of the local economy in the procurement process (where possible) as a priority.

The Council's contract procedure rules include a requirement that, wherever possible, a minimum of two local suppliers are to be given the opportunity to submit quotations for Council requirements.

This, coupled with the requirements of the Public Services (Social Value) legislation, provide the Council with the ability to offer local suppliers opportunities win business from the Council and to demonstrate the benefits that a local supply base can provide.

3.9 Contract and Supplier Management

Contract management is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing any changes that may arise during its implementation or execution. It can be summarised as the process of systematically and efficiently managing contract creating, execution, and analysis for the purpose of maximising financial and operational performance and minimising risk.

The Council implements a range of contract management practices, with the majority of effort being focussed on high value / high risk contracts. Some contract management arrangements incorporate clear governance and reporting arrangements extending through to the Council's corporate management teams.

Contract Management must be undertaken in such a way that it secures performance but also informs future specifications, procurement strategies and supplier choice. It should assist in reviewing our own processes and checking whether they provide the required outcomes.

4. MEMBER AND OFFICER TRAINING AND DEVELOPMENT

There is a continuous need for training in existing and any revised/new processes to ensure consistency and compliance and to meet the objectives and principles of the Strategy.

Appendix 1 OPTIONS APPRAISAL

Each option will be appropriate in particular circumstances and some of the options can manifest themselves in different ways. The following tables set out when each option may be more, or less, appropriate. The bullet points are *alternative* reasons why the option may be more or less suitable; they are not checklists of conditions that must be met.

1. *Withdrawal*

The authority decides that it should withdraw from providing a service or taking part in an activity.

More suitable

- Evidence of no need or demand for the service;
- Other providers can continue without intervention or support from the local authority;
- Costs of the service or activity considerably outweigh benefits;
- Service or activity makes no contribution to corporate objectives.

Less suitable

- Doubts about the evidence;
- Uncertainty about whether the alternative providers do meet existing needs or demands;
- Potential for future service development.

2. *Improved internal service management*

Service is provided in-house. Management may be through traditional hierarchy, internal trading arrangements, or service level agreements. The authority may involve, or consult, users in decisions about overall objectives and in monitoring service quality.

More suitable

- The existing internal service is, or is close to, meeting local targets and national standards;
- There is no supply market;
- Costs of externalisation are likely to be high;
- High impact if service fails.

Less suitable

- Poor existing internal services;
- Need for external investment;
- Active, competitive, market with established suppliers;
- Service is easy to specify and monitor.

3. Joint commissioning

Two or more public service organisations agree to commission or provide services together. There is no 'client' or 'contractor' and the organisations are jointly involved in management.

More suitable

- Services are provided from a single point (e.g. a one-stop-shop, or a call centre);
- Participating organisations are willing to agree mutual objectives in the interests of the joint service;
- Financial and other risks can be shared on an equitable basis;
- Participating organisations do not have the wide range of expertise or sufficient resources to deal with all requests for service but the volume of requests does not justify investment by each authority;
- Sharing resources, staff, etc. will produce significant economies and improve quality;
- All participating organisations require the same, or very similar service;
- Clear lines of responsibility and accountability can be established.

Less suitable

- Organisational identities and imperatives are more important than a seamless service;
- There are no obvious and willing partners;
- Legal constraints cannot be overcome.

4. Market testing

The in-house organisation competes with external service providers to win the work.

More suitable

- The pressure of competition is necessary to ensure improvements or clarity of definition in in-house performance;
- There is an active and competitive supply market;
- The service is easy to specify and monitor;
- A new service area is being developed where there is the possibility of both in-house provision and the use of external provision;
- In-house performance can be benchmarked against competition.

Less suitable

- Potential suppliers likely to suspect the authority is 'going through the motions' and not bid;
- Staff are unlikely to make the improvements necessary;
- The costs of preparing for competition (both client and contractor) outweigh benefits;
- The authority's service objectives go beyond a simple cost calculation;
- The in-house team has no real chance of winning;

- Market testing is suggested as a last ditch effort to avoid externalisation.

5. Externalisation (1)

Service is provided by external organisations that compete to do the work. Management is through the specification, which sets out the work to be done, and the contract conditions that form the basis of the relationship between client and service provider.

More suitable

- Poor existing internal services, or new services where internal supply is thought inappropriate;
- There will be a clear client/contractor relationship;
- There is an active, competitive market with established suppliers;
- Benefits of using the market outweigh the costs;
- Service is easy to specify and monitor.

Less suitable

- Internal service management is demonstrably best value;
- Opportunists or monopolists dominate the market;
- The Council's service objectives go beyond a simple cost calculation;
- Service is difficult to specify and monitor;
- Other methods of provision offer better value.

6. Externalisation (2) A contract supplemented by a formal “partnership” arrangement

The services are supplied through a contract that places greater emphasis on shared objectives and on the relationship with the supplier.

These arrangements are also referred to as “partnering arrangements”.

More suitable

- The service is difficult to specify and monitor;
- The authority wants to work with an organisation it can “do business with” rather than one that just “does the business”;
- It is possible to agree on a programme of future innovation;
- There is a high level of mutual trust between authority and suppliers;
- External suppliers can offer savings, innovation, or other benefits that cannot be found in-house.

Less suitable

- Opportunists dominate the market;
- The service is easy to specify and monitor;
- In-house supply is more likely to deliver best value;
- The Council's main objective is to achieve savings.

7. *Transfer*

The authority ceases to be the ‘client’. That role is taken over by another organisation. This may be residents’ association, community group, charity, co-operative or trust. The authority may still have a residual role, for example, a seat on the board, nominating people for services; grant aid; or by subsidising service delivery to the public.

More suitable

- The activities of, or services provided by, the organisation fit with the Council’s overall objectives;
- The local authority and other organisations agree on the level of accountability required;
- Community groups already exist or are being formed;
- Services are provided to the community or the community and individuals make a contribution to the service;
- Community groups have, or can be trained in, necessary management skills;
- The authority has a commitment to community development and the involvement of communities in service management;
- Organisational independence is necessary to ensure users’ trust or ‘ownership’ of the service or activity;
- Where transfer offers advantages financially or in other ways by means of the legal standing of another organisation, for example, a trust.

Less suitable

- The Council has clear service objectives that it wants to achieve;
- The service is significant (in financial or operational terms) and needs close management, specification, and monitoring;
- Personal or highly regulated services;
- It would be more appropriate (in line with Best Value and the authority’s policies) to make contracts, or partnering arrangements, with local or community businesses;
- There is little, or no, community interest in service management and delivery;
- There is an active supply market and no policy gain can be made by transfer.

8. *Hybrid options*

The authority decides that no single option is appropriate. The service includes a variety of different types of activity, or the “Best Value” tests applied to different parts of the service come up with different answers.

More suitable

- A “service” is made of discrete aspects that have different Best Value tests applied to them;
- Areas of excellence exist side-by-side with services that need considerable improvement;

- Different elements make clearly different contributions to overall service delivery and Best Value;
- There is a wide range of user needs which are best met in different ways;
- External resources can most effectively be used to support in-house services rather than competing with them;
- Evidence from the review is equivocal.

Less suitable

- The service is easy to specify and monitor;
- The service is a clearly definable single service;
- The service is made up of so many separate elements that a hybrid approach could lead to an unmanageable complexity of contracts, agreements, and inter-dependencies;
- Economy and effectiveness are served best by a single service delivery organisation.

Appendix 2 PROCUREMENT ROUTES

The following diagram provides a summary of the questions Council Officers should ask themselves once a need for goods or services has been identified.



FINANCE AND CORPORATE SERVICES PORTFOLIO

Report To Portfolio Holder
17th April 2013



Report of: Assistant Director (Resources)

Subject: LOCALISM ACT 2011
COMMUNITY RIGHT TO BID

1. TYPE OF DECISION/APPLICABLE CATEGORY

1.1 Non-key Decision.

2. PURPOSE OF REPORT

2.1 To consider the proposals and procedures for dealing with the legal implications and requirements placed on the local authority under the recently introduced "Community Right to Bid" legislation.

3. BACKGROUND

3.1 The Localism Act 2011 introduced the Community Right to Bid as one of a number of new rights for communities. The Localism Act was enacted on 15th November 2011, and the Community Right to Bid came into force on 21st September 2012 following the publication of the Assets of Community Value (England) Regulations. The Community Right to Bid is now more commonly known as the assets of community value scheme.

3.2 A report was received by Cabinet at their meeting on the 7th January 2013 to outline the legislation. Cabinet agreed to:

- Give approval to the Director of Regeneration and Neighbourhoods and the Chief Solicitor to put procedures in place to receive and deal with nominations, compensation and enforcement and to maintain the list thereafter.
- That the Finance and Corporate Services Portfolio Holder deal with procedures under the legislation.

3.3 This report provides detailed proposals for dealing with the legislation.

- 3.4 The scheme gives communities the opportunity to identify assets of community value and have them listed, and when they are put up for sale communities are then given time to raise finance and put in a bid to acquire them. The right to bid impacts on all public bodies, either as local authorities required to administer the scheme or as land owners of land that may be nominated as an asset of community value.
- 3.5 From research undertaken it is very clear that different local authorities are taking different approaches in the way they manage and deal with the legal responsibilities that are placed upon them under the legislation. Although the scheme is now in force a number of local authorities have yet to finalise their internal administrative processes to manage their responsibilities under the scheme.
- 3.6 The Chartered Institute of Public Finance and Accountancy undertook a survey in October 2012 of their Asset Management Planning Network members to find out how authorities have responded to the requirements of the Act and to gain a wider understanding of how the scheme is being implemented in practice.
- 3.7 One of the main questions asked was – which corporate area or department do you consider should be responsible for managing the list of assets of community value within your authority? Of those who had defined a responsibility, nearly half (46%) allocated this role to the Strategic Asset Management area (or Estates). Community Engagement followed at (19%), then Planning/Building Control (17%) and small numbers in legal and policy teams. Other areas identified were the Land Charges Section and Development & Regeneration.
- 3.8 Of those authorities that have approved procedures in place, the majority have documentation publicly available on individual authority websites. Many of which extend to only a single viewing page with numerous links (internal & external) to the supporting documentation.

4. PROPOSALS

- 4.1 It is proposed that a new web-page be uploaded to the Council's website as detailed in **Appendix A** of this report. The page will clearly explain the Council's procedures in relation to the scheme and how to make a nomination to the authority, together with the option to download the nomination form (**Appendix B**). There will also be a link to guidance on how to complete the nomination form (**Appendix C**). It is also proposed that the new web-page shall have links to the external guidance on the Act published by the Department of Communities and Local Government and also current lists held by the authority of those assets that are considered to be an Asset of Community Value and also those assets that have been through the nomination process but are not considered to be an asset of community value. The Act places a legal

duty on all local authorities to maintain a publicly available list of assets of community value.

- 4.2 It is proposed that the Estates & Asset Manager shall take on the responsibility for the management of the Community Right to Bid process and the maintaining & recording of the nomination listings. However, once a nomination is received by the Authority, it is proposed that this service area shall not be the only one involved in the actual decision making process.
- 4.3 It is proposed that an Officer Working Group be set up with a nominated officer present from the service areas that were identified in the CIPFA survey of the Planning Network members. The Group shall be chaired by Estates & Asset Management and have officer representation from Neighbourhood Management, Legal Services and Planning (and any others that are considered appropriate).
- 4.4 It is not yet known how regularly the Group will be required to convene, that will depend on the number of asset nominations that are received for consideration. This can be reviewed from time to time and if it transpires that a more formal meeting timetable is required then that can be addressed in due course. To date the Authority has received no nominations to register an asset as being an Asset of Community Value.
- 4.5 Once a nomination is received the Group will then have 8-weeks to make a judgement about whether the asset meets the definition set out in Section 88 of the Act or whether it falls into one of the excluded categories, including residential property, as set out in Schedule 1 of the Regulations.
- 4.6 The guidance criteria issued from the DCLG is basically as follows;
 - the current primary use of the building/land or use of the building/land in the recent past furthers the social well-being or social interests (cultural, recreational, or sporting interests) of the local community;
 - it is realistic to think that now or in the next 5-years there could continue to be a primary use of the building/land which will further the social well-being or social interests of the local community.
- 4.7 If the nominated asset has been properly nominated, is in the local authority's area, meets the definition criteria, and is not excluded, then the local authority must then formally list it as an Asset of Community Value.
- 4.8 In order to make such a judgement as to whether to list an asset or not, the Group will (once a proposal has been made by the Group) report it back to the Finance and Policy Committee to have the judgement

approved. Any decision made must be within the 8-week period as defined under the Act.

- 4.9 Once a decision has been made to make a listing the Estates & Asset Manager shall update the list of assets that are considered to be of Community Value and note the date that the decision was made. It must be noted that the listing of an asset subsides after a period of 5-years.
- 4.10 The Estates & Asset Manager shall also write to all the specified parties (owner, occupier, Parish Council, nominator etc) informing them that a judgement has been made to list the asset and the date the decision was made or approved.
- 4.11 The Estates & Asset Manager shall also send instructions to the Local Land Charges section to enter a record on the Charges Register that the asset has been formally listed as an Asset of Community Value and the date of the listing. In the case of assets that have a registered title at the HM Land Registry the Estates & Asset Manager shall also instruct Legal Services to apply for a restriction to be placed on the Land Register.
- 4.12 An owner can object to a decision to place their property on the list of Assets of Community Value and they have a right to an internal review by the Council of their decision to list. If an owner is still in disagreement with the listing after the internal review process then they do have a right of a further appeal to an independent Tribunal.
- 4.13 If the Group do not agree that the nominated asset meets the Section 88 definition, or it is in one of the excluded categories, it must be then placed on a list of assets that have been through the nomination process but have not been listed as an Asset of Community Value. It is for the Local Authority to decide how long they hold unsuccessful nominations on this list, but the intention being to ensure transparency and to avoid multiple nomination of an asset that does not meet the legal definition.
- 4.14 Once a nomination has been unsuccessful the Estates & Asset Manager shall write to the community nominators (and any other specified parties) to inform them of the decision and the reasons why the local authority have decided not to list the asset as being an Asset of Community Value.
- 4.15 Once an asset has been listed as being an Asset of Community Value nothing further will happen unless the owner decides to dispose of it. This can be by way of a freehold sale, or the grant or assignment of a qualifying lease (a lease originally granted for a term of at least 25-years or more). Unless an exemption applies, the owner will only be able to dispose of the asset following an initial 6-week moratorium period, which will apply in all cases from the point the owner notifies the local authority of the intention to dispose. This 6-week period is to allow community interest groups to make a written request to be treated as a potential bidder for the acquisition of the community asset. If none do so in this

period then the owner is free to sell the asset and the end of the 6-week period.

- 4.16 If a community interest group does make a request within this initial 6-week moratorium period, then a full 6-month moratorium period will commence (from the date of disposal notification from the owner to the local authority). During this period the owner may continue to market and negotiate sales, but may not exchange contracts (or enter into a binding contract to do so later). There is one exception, that being the owner may sell to a community interest group during the moratorium period. After the moratorium period, be it the initial 6-week period or the full 6-month period, the owner is free to sell the asset to whoever they choose and at whatever price they want.
- 4.17 The Estates & Asset Manager shall also have the responsibility for the assessment and award of any compensation that may be payable under the scheme. The Act provides that any owner or former owner of listed land or previously listed land, is entitled to compensation from the responsible authority of such amount as the authority may determine for any incurred loss or expense in relation to the land/building which would be likely not to have been incurred if the land/building had not been listed. All claims for compensation must be made in writing to the Estates & Asset Manager and they will then be assessed in accordance with the provisions laid down in Regulation 14 of The Assets of Community Value (England) Regulations 2012.

5. FINANCIAL AND RISK IMPLICATIONS

- 5.1 There are several risks associated with the proposals; challenges on nominations & exemptions, assessment of compensation arrangements, enforcement and the effects on the Council's Asset Management Strategy, in particularly the proposed disposal of assets and the potential impact on the capital receipts programme.
- 5.2 There will also be a burden on the Council in administering the scheme with particular implications for Legal and Estates Management teams in terms of both private land and land owned by the authority which may be nominated for listing.
- 5.3 There is a possibility that the nomination of land or property owned by the Council could be used to thwart or frustrate otherwise agreed arrangements for disposal of the asset.
- 5.4 The Council will need to make provisions for the payment of any Regulation 14 compensation payments below a £20,000 threshold. The Government has committed to meet the cost of any compensation payments over £20,000 in a financial year. However, it could result that the Council might have a significant new financial burden if many legitimate claims are made below the threshold level.

- 5.5 There is also the prospect of the Council becoming embroiled in disputes between community groups and landowners whilst following a new procedural approach that rigidly defines what a Local Authority must do. It is also a concern that the procedure may be open to abuse in order to gain compensation entitlements and the Council will need to have effective processes in place to safeguard against such actions.
- 5.6 The process driven approach may also hinder democratic decision making whereby elected members, acting in the interest of a much wider electorate, that their decisions on local services fettered by a much smaller representation of local interests.

6. EQUALITY AND DIVERSITY CONSIDERATIONS

- 6.1 Nominations and the procedures to deal & consider them will need to be open and transparent.

7. SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS

- 7.1 When any asset is nominated and under consideration for listing under the scheme Community Safety issues will need to be addressed.

8. RECOMMENDATIONS

- 8.1 That the Portfolio Holder approve the proposals put forward for dealing with the Community Right to Bid scheme and that these robust procedures are put in place to effectively manage the legal requirements placed upon the authority under the Act.

9. REASONS FOR RECOMMENDATIONS

- 9.1 To enable the above-mentioned legislation to be addressed and a formal policy & procedure be adopted by the authority for dealing with the responsibilities placed upon them under the Act.

10. APPENDICES AVAILABLE ON REQUEST, IN THE MEMBERS LIBRARY AND ON-LINE

- 10.1 Assistant Chief Executive's report to Cabinet – 6th August 2012.
- 10.2 Director of Regeneration & Neighbourhoods report to Cabinet – 7th January 2013.

11. BACKGROUND PAPERS

11.1 There are no background papers to this report.

12. CONTACT OFFICER

Graham Frankland
Assistant Director (Resouces)
Civic Centre,
Hartlepool
TS24 8AY

Tel: (01429) 523211

Email: graham.frankland@hartlepool.gov.uk

Community Right to Bid

Part 5 Chapter 3 of the Localism Act (2011) details regulations for Assets of Community Value and sets out the Community Right to Bid.

The Right came into force on 21 September 2012 and its purpose is to give communities a right to identify a property that is believed to be of value to their social interests or social wellbeing and gives them a fair chance to make a bid to buy the property on the open market if the property owner decides to sell. Currently only eligible community groups, local parish councils or local neighbourhood planning forums and charities can nominate.

Making a nomination

It is important that your community group is eligible to nominate, you can only do this if you answer yes to the two questions below:

- Do you have a local connection to the property you are wishing to nominate? and;
- Are you an unincorporated community group with at least 21 members who are registered to vote in the Hartlepool area, a parish council, charity, industrial & provident society, local neighbourhood forum, company limited by guarantee or community interest company?


To nominate you must inform us of the address of the property, details of the owner, the extent of the site and why you feel it is an asset of community value. You must also provide evidence of your eligibility to nominate.

To assist you we have created a nomination form which you can download from the tab on the bottom of this page and return it to the email address **estates@hartlepool.gov.uk**. Alternatively, you may send your nomination by post to the Estates & Asset Manager Bryan Hanson House Hanson Square Hartlepool TS24 7BT

Further guidance on completing the nomination form can be obtained by clicking on the guidance document on the download tab at the bottom of this page.

What we will do next

Once we have received the completed form, we will consider and check the eligibility of the nomination and if we feel the property does have community value it will be added to the 'List of Assets of Community Value'. Assets will remain on the list for five years and a land charge will be registered against the property. We aim to assess nominations within eight weeks of receipt.



You will be advised that the property has been listed and the date in five years time when it will be removed. When the five years have expired you can submit a new nomination.

If we decide to list a property the property owner can ask for a review and there will be a process for an appeal to an independent body. Further guidance will be provided in the letter to the property owner.

We will notify the nominee should the nomination be ineligible and provide an explanation as to why it was unsuccessful. In such circumstances the property will be added to the list of 'Land Nominated by Unsuccessful Community Nominations' and will remain on the list for five years.

Nominees are not able to appeal the decision made in respect of the property however, a complaint can be made, if you feel we have not followed the correct procedure, through the council's complaint procedure.

Viewing nominated properties


You are able to view properties that have been successfully listed on the 'List of Assets of Community Value' and properties that have not been successful on the 'List of Assets Nominated by Unsuccessful Nominations' by clicking on the download tab at the bottom of this page.

Making a bid

It is important to note that not all groups mentioned under 'making a nomination' above are eligible to place a bid. All groups can nominate but only unincorporated groups cannot bid as they are unable to legally own property. The owner of the property must advise us when they intend to sell the property and we will publicise this on our website as well as informing the nominator.

If you want to make a bid you must inform us within six weeks of us telling you the property is available to purchase. You will then have six months to put together the bid (please note - this is not from when you inform us but six months from when the owner advises us of their intention to sell (this is known as the moratorium period). If there is more than one community group interested in purchasing the property we would encourage the groups to work together.

At any point before the end of the six months you may enter into negotiations with the property owner providing the owner is willing to do this. We would ask that we are kept informed of developments.



At the end of the moratorium period, if you have successfully put a bid together, the owner will have the option to either accept your bid or sell the property freely on the open market.

For details about the definition of asset of community value, sales outside the Act and land owner compensation please refer to the 'Ask a question' tab.

Further information can be found on the links on this page.

Community Right To Bid

Nomination Form

If you need assistance completing this form please refer to the guidance document that can be downloaded from the website www.hartlepool.gov.uk or alternatively phone 01429 523386

Section 1 About the property to be nominated

Name of Property	_____
Address of property	_____

Postcode	_____
Property owners name	_____
Address	_____

Postcode	_____
Current Occupiers Name	_____

Section 2 About your community organisation

Name of organisation	_____
Title	_____
Name	_____
Position in organisation	_____
Email address	_____
Address	_____

Postcode	_____
Phone Numbers	_____

Organisation type	<input type="checkbox"/> Parish Council	<input type="checkbox"/> Unincorporated Community Group
	<input type="checkbox"/> Neighbourhood Forum	<input type="checkbox"/> Community Interest Company
	<input type="checkbox"/> Industrial & Provident Society	<input type="checkbox"/> Company limited by guarantee
	<input type="checkbox"/> Charity	<input type="checkbox"/>

How many member do you have? (this is particularly important for unincorporated community groups)

Please send your completed form to either
Estates@Hartlepool.gov.uk or
 Estates & Asset Manager
 Bryan Hanson House Hanson Square Hartlepool TS24 7BT



Section 3 Supporting Information for Nomination

Any information entered in this section only may be copied and passed onto the owner of the property you are nominating

Why do you feel the property is an asset of community value? Please give as much information as possible:

--

Section 4 Boundary of Property

What do you consider to be the boundary of the property? Please give as much detail/ be descriptive as possible, using a plan as you are able

--

Section 5 Attachment Checklist

- ☐ Copy of group constitution (If you are a constituted group)
- ☐ Name and home addresses of 21 members registered to vote in nomination area (if group is not incorporated)
- ☐ boundary plan (if possible)

Section 6 Declaration

I can confirm that to the best of my knowledge the information contained in this nomination form is complete and accurate

Signed _____ Date _____

Data protection

We will process the information provided in accordance with the data protection act 1998 and in line with the Council's data protection policy. Information is stored securely for six years after which time it will be destroyed.

The information provided will be subject to the Freedom of Information Act but personal information (names and contact details) will not be released in response to requests

Community Right to Bid Nomination Guidance

Current Occupier

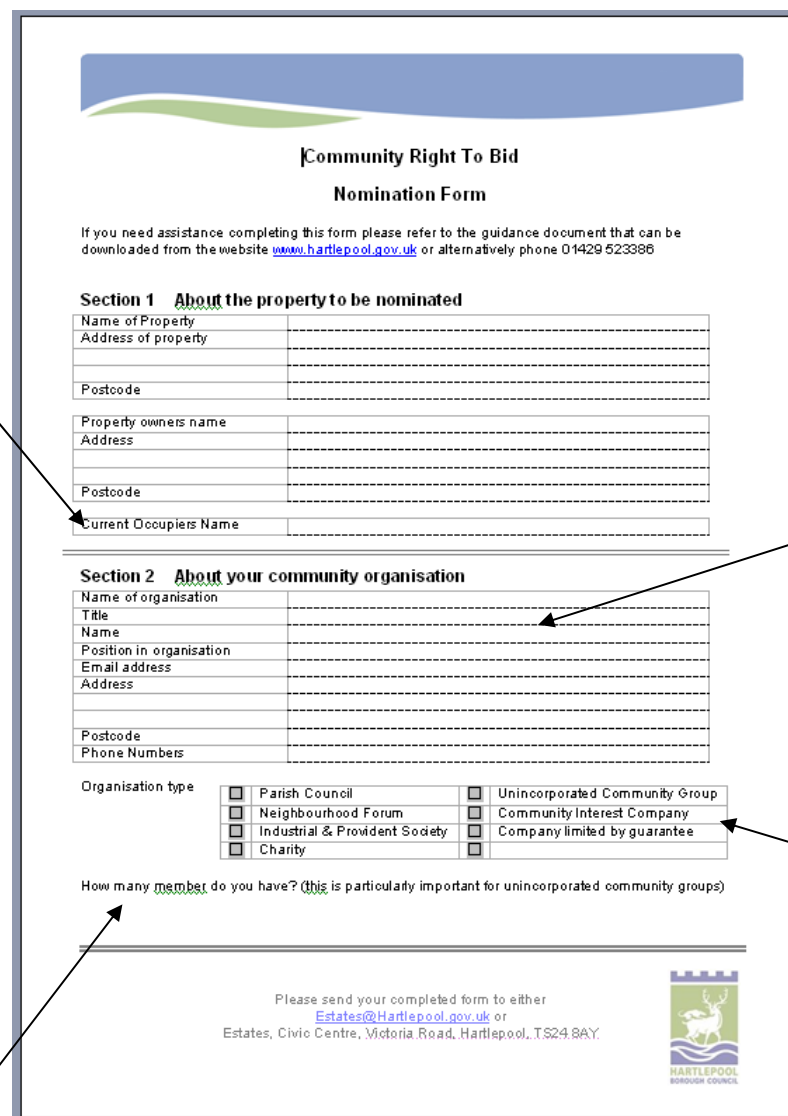
The current occupier may not be the same as the property owner so it is important that we advise all affected should the property be listed

What is a constitution

A constitution sets out what the main aims of the organisation are and how the group will be governed. It details the structure of the group and how members will work together to achieve its aims (including how the management team are elected and how new members can join the group). It should detail the frequency and level of meetings i.e. every quarter and a yearly AGM and how finances will be dealt with. Examples of a constitution can be searched on the Internet

Number of members

Only groups with three or more members are able to nominate



**Community Right To Bid
Nomination Form**

If you need assistance completing this form please refer to the guidance document that can be downloaded from the website www.hartlepool.gov.uk or alternatively phone 01429 523386

Section 1 About the property to be nominated

Name of Property	
Address of property	
Postcode	
Property owners name	
Address	
Postcode	
Current Occupiers Name	

Section 2 About your community organisation


Name of organisation	
Title	
Name	
Position in organisation	
Email address	
Address	
Postcode	
Phone Numbers	

Organisation type

<input type="checkbox"/> Parish Council	<input type="checkbox"/> Unincorporated Community Group
<input type="checkbox"/> Neighbourhood Forum	<input type="checkbox"/> Community Interest Company
<input type="checkbox"/> Industrial & Provident Society	<input type="checkbox"/> Company limited by guarantee
<input type="checkbox"/> Charity	

How many member do you have? (this is particularly important for unincorporated community groups)

Please send your completed form to either
Estates@Hartlepool.gov.uk or
 Estates, Civic Centre, Victoria Road, Hartlepool, TS24 8AY.



Please Note

We prefer to correspond via email to quickly and effectively deal with nominations and queries, however, postal nominations will be accepted. If you cannot provide us with an email address we must have at least one contact telephone number

Contact Details

The contact name must be the same as the person signing the declaration overleaf. Ideally, this will be a member of the management team (chairperson, secretary or treasurer).

Organisation Type

It is important you state which organisation type you are as only those shown here are currently eligible to nominate and all but un-constituted community groups are able to bid. Un-

Community Right to Bid Nomination Guidance

What is the definition of an asset of community value?

A building or land is deemed to be of community value if, in the opinion of the council:

- The current main use of the building or land furthers the social interests or social wellbeing of the local community, **and** it is realistic to think that there can continue to be a main use of the building or land which will further the social interests or social wellbeing of the local community, although not necessarily in the same way, or:
- The main use of the building or land in the recent past furthered the social interests or social wellbeing of the local community **and** it is realistic to think that within five years the building or land can be brought back into use that furthers the social interest or wellbeing of the local community, whether or not in the same way as before.

But what does social interest and social wellbeing mean?

Social interests include (a) cultural interest; (b) recreational interests; (c) sporting interests.

Wellbeing is the things that people value in their life that contributes to them reaching their potential (economic, social or environmental)

Section 3 Supporting Information for Nomination
Any information entered in this section only may be copied and passed onto the owner of the property you are nominating

Why do you feel the property is an asset of community value? Please give as much information as possible:

Section 4 Boundary of Property
What do you consider to be the boundary of the property? Please give as much detail/ be descriptive as possible, using a plan, as you are able

Section 5 Attachment Checklist

<input type="checkbox"/>	Copy of group constitution (if you are a constituted group)
<input type="checkbox"/>	Name and home addresses of 21 members registered to vote in nomination area (if group is not incorporated)
<input type="checkbox"/>	boundary plan (if possible)

Section 6 Declaration
I can confirm that to the best of my knowledge the information contained in this nomination form is complete and accurate

Signed _____ Date _____

Data protection
We will process the information provided in accordance with the data protection act 1998 and in line with the Council's data protection policy. Information is stored securely for six years after which time it will be destroyed.
The information provided will be subject to the Freedom of Information Act (but personal information (names and contact details) will not be released in response to requests)

Supporting Information for Nomination

In here you need to put why you feel the property currently boosts the social interest and social well being of the local community or if it had in the past why it is realistic to think that it could in the future.

Boundary of the Property

We need to know the extent of the property that you are nominating: This may include the car park area as an example. However, it should be noted that any area which is in the ownership [of a statutory undertaker (i.e. electricity substation) cannot be listed.

Cabinet

7th January 2013



Report of: Director of Regeneration and Neighbourhoods

Subject: LOCALISM ACT 2011 – COMMUNITY RIGHT TO BID

1. TYPE OF DECISION/APPLICABLE CATEGORY

1.1 Non-Key.

2. PURPOSE OF REPORT

2.1 To advise Cabinet of the requirements and guidance in connection with the “Community Right to Bid” subsequent to the Assistant Chief Executive’s Cabinet report of 6th August 2012.

3. BACKGROUND

3.1 The Localism Act (“the Act”) was enacted on 15 November 2011, and the Assets of Community Value provisions in Part 5 Chapter 3 were commenced for England at the same time as the Regulations made under those provisions came into force, both on 21 September 2012.

3.2 The provisions

- Give communities the right to identify buildings or other land that they believe to be of importance to community’s social well-being (assets of community value)
- Ensure that if a (listed) asset comes up for sale, they will be given a fair chance to make a bid to buy it on the open market

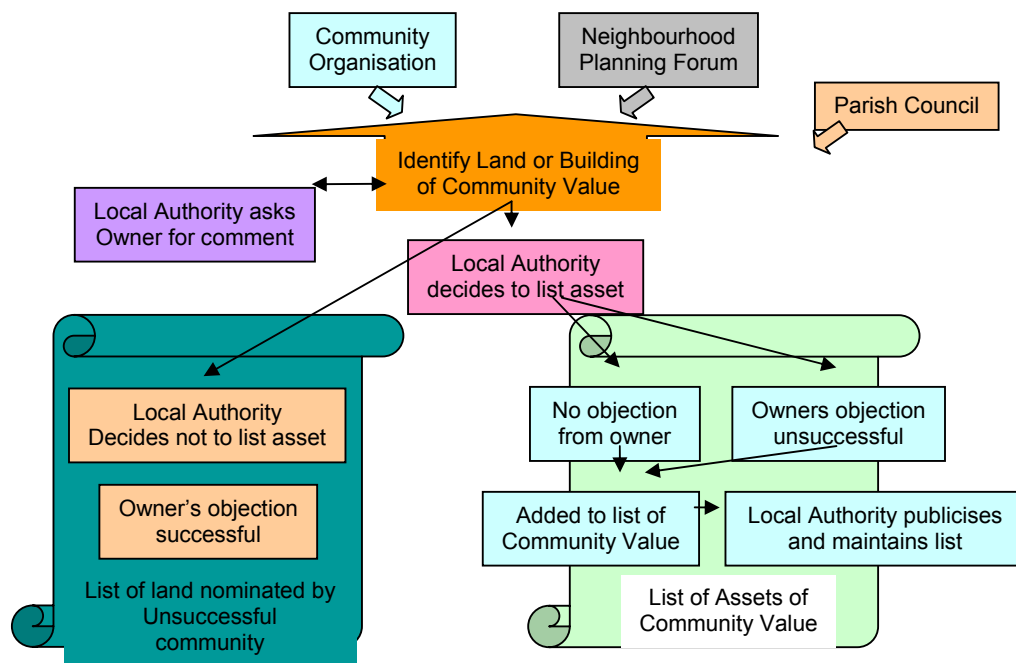
Nothing further will happen unless and until owner decides to dispose of asset.

3.3 The provisions **do not**

- Place any restriction on what an owner can do with their property
- Restrict who an owner of a listed asset can sell his property to, or at what price
- Confer a right of first refusal to community interest groups

3.4 The Act places a legal duty on all local authorities to maintain a publicly available list of assets of community value. A building or land in a local authority's area is an asset of community value **if in the opinion of the authority:**

- current primary use of the building/land or use of the building/land in the recent past furthers the social well-being or social interests (cultural, recreational, or sporting interests) of the local community;
- it is realistic to think that now or in the next five years there could continue to be primary use of the building/land which will further the social well-being or social interests of the local community.



3.5 Local authorities will have some say over the form of the list. Listed assets will be removed from the list after five years. Land and buildings can **only** be listed as community assets if this is permitted by regulations made by the Secretary of State and a parish council or 'voluntary or community body' with a 'local connection' has submitted a 'community nomination.' Listed assets will also need to be entered on the local land charges register.

3.6 Owners of listed assets cannot dispose of them without:

- letting the local authority know that they intend to sell the asset or grant a lease of more than 25 years;
- waiting until the end of a six week 'interim moratorium' period if the local authority does **not** receive a request from a community interest group to be treated as a potential bidder;
- waiting until the end of a six month 'full moratorium' period if the local authority **does** receive a request from a community interest group to be treated as a potential bidder.

3.7 The owner does **not** have to sell the asset to the community group.

- 3.8 There is also a 'protected period' (18 months from the time that the owner notified the local authority of their intention to dispose of the asset) – during this time there can be no further moratoriums.
- 3.9 Local authorities have a legal duty to:
- consider community nominations and list buildings/ land as community assets if they meet the criteria;
 - write to unsuccessful community nominators and explain why they have decided not to list the building/land as a community asset;
 - give written notice of the inclusion or removal of buildings/land from the list of community assets to the owner of the building/land, the occupier of the building/land, the community nominator and anyone else specified in regulations made by the Secretary of State;
 - draw the owner's attention to the consequences of their building/ land being listed as a community asset and the right to ask for the decision to be reviewed by the local authority;
 - maintain a publicly available list of unsuccessful community nominations, which explains why these nominations were unsuccessful;
 - make the community nominator and local residents aware when the owner of a listed asset gives notice of their intention to sell – the local authority is also responsible for updating the entry for the listed asset to include the owners intention to sell and dates for the end of the 'interim' and 'full' moratorium periods and 'protected period';
 - notify the owner of a listed asset of a written request from a community interest group to be treated as a potential bidder.
- 3.10 The Secretary of State has powers to introduce regulations that set out:
- the types of buildings/land that are **not** of community value – regulations may be based on the owner of the building/land, the occupier of the building/land, the nature of the building/land, the use to which the building/land has been, is being or could be put and the price or value of the building/land
 - the contents of the 'community nomination' and the exact meaning of 'voluntary or community body with a local connection' and 'community interest group'
 - the procedures local authorities must follow when deciding whether to list buildings or land as community assets
 - the procedures local authorities must follow when reviewing decisions to list buildings or land as community assets
 - who will be eligible for compensation, how compensation will be calculated and who will be required to pay compensation (depending on the regulations this may apply to local authorities)
 - how enforcement action will be carried out

4. **COMMUNITY RIGHT TO BID: NON STATUTORY ADVICE NOTE FOR LOCAL AUTHORITIES**

- 4.1 The provisions give local groups a right to nominate a building or other land for listing by the local authority as an asset of community value. It can be

listed if a principal (“non-ancillary”) use of the asset furthers (or has recently furthered) their community’s social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future. When a listed asset is to be sold, local community groups will in many cases have a fairer chance to make a bid to buy it on the open market.

4.2 The Assets of Community Value legislation places requirements on the following local authorities in England:

- (a) a district council,
- (b) a county council for an area for which there are no district councils,
- (c) a London borough council,
- (d) the Common Council of the City of London, or
- (e) the Council of the Isles of Scilly.

4.3 The scheme has two main parts: nominating and listing assets and the moratorium.

Nominating an asset – Implications for the Council

4.4 It is open to parishes and community organisations, including neighbourhood forums (as constituted under section 61F of the Town and Country Planning Act 1990, added to that Act by the Localism Act) to nominate local assets to their local authority, to be included on the list of assets of community value. Nominated assets may be owned by anybody, including the local authority and the Crown.

4.5 A neighbouring parish council can nominate an asset. Where the land is in a parish area, this means a parish which shares a border with it; or if an asset is in an unparished local authority area, so that there is no immediately adjoining parish council within the same local authority area, a parish council that borders the local authority could nominate an asset.

4.6 The local authority will then have 8 weeks to make a judgement about whether the asset meets the definition set out in section 88 of the Act or whether it falls into one of the excluded categories, including residential property, set out in Schedule 1 to the Regulations.

4.7 If the nominated asset is properly nominated, is in the local authority’s area, meets the definition, and is not excluded, the local authority must list it and inform all specified parties (including the parish council). They must also place the asset on the local land charges register and, if the land is registered, apply for a restriction on the Land Register.

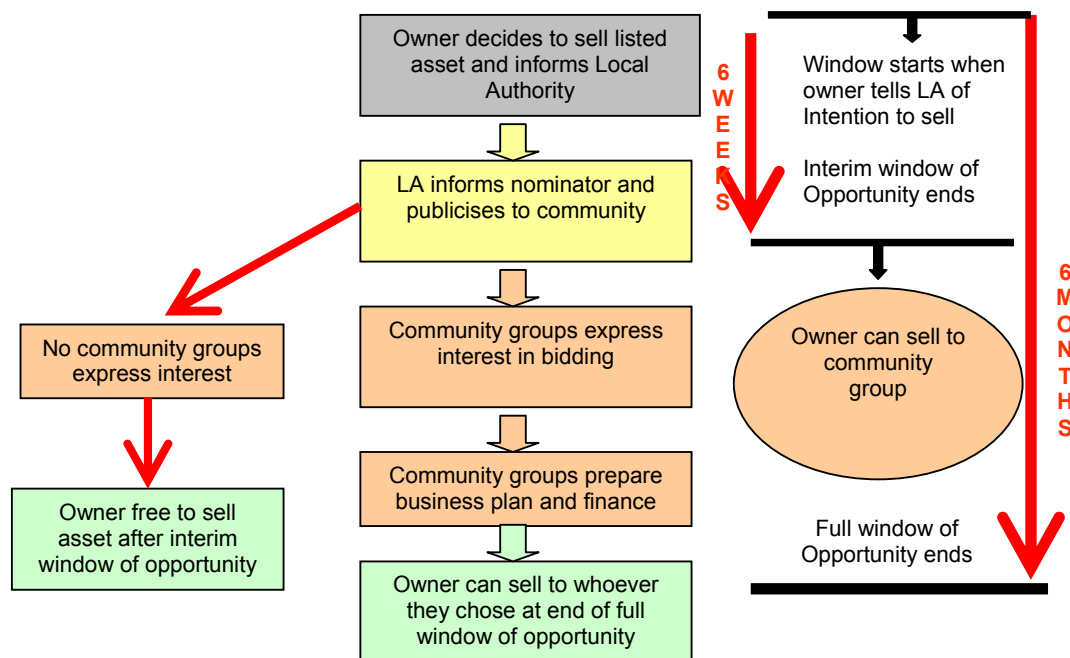
4.8 If the owner objects to their property being placed on the List, they will have a right to an internal review by the council of the decision to list. The details of this process are set out below. If the owner remains in disagreement with the listing after the internal review they have a right of appeal to an independent Tribunal.

4.9 If the local authority do not agree that the asset nominated meets the section 88 definition, or it is in one of the excluded categories, they must place it on

a list of assets nominated but not listed. If an owner is successful in their appeal against listing at internal review or Tribunal stage then the asset must also be moved to the list of unsuccessful nominations. It is for the local authority to decide how long they hold unsuccessful nominations on this list. The intention of this is to ensure transparency and to avoid multiple nomination of an asset that does not meet the definition.

Moratorium

- 4.10 Once an asset has been listed nothing further will happen unless and until the owner decides to dispose of it, either through a freehold sale, or the grant or assignment of a qualifying lease (i.e. originally granted for at least twenty-five years). The figure below illustrates the procedures to be followed:-



- 4.11 Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired.
- 4.12 The first part of this window is a 6 week interim period, which will apply in all cases, from the point the owner notifies the local authority. This will allow community interest groups to make a written request to be treated as a potential bidder. If none do so in this period, the owner is free to sell their asset at the end of the 6 weeks.
- 4.13 If a community interest group as defined in regulation 12 of the Regulations (referring to the bodies in paragraph (1) (d) to (g) of regulation 5) does make a request during this interim period, then the full 6 month moratorium (again from the point the owner notifies the local authority) will operate. During this period the owner may continue to market and negotiate sales, but may not

exchange contracts (or enter into a binding contract to do so later). There is one exception. The owner may sell to a community interest group during the moratorium period.

- 4.14 After the moratorium period – either the 6 weeks if there has been no community interest, or the full 6 months – the owner is free to sell to **whomever they choose and at whatever price**, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the local authority of wishing to sell). The process and lengths of the moratorium periods are contained in section 95 of the Act².
- 4.15 Not all proposed sales have to be notified to the local authority however. A range of disposals will be exempted from the provisions. A number are set out in section 95(5) of the Act, and others are in the Regulations.

Compensation

- 4.16 The scheme recognises that these provisions may have some financial impact on owners and provides a compensation scheme for private property owners. This will not be available to public bodies. The local authority will be responsible for administering the compensation scheme, including assessing and determining compensation awards. Owners and former owners will have rights of review and appeal regarding the authority's compensation decisions.

Enforcement

- 4.17 The scheme provides for various mechanisms to encourage compliance by requiring local authorities to:
- Inform owners and other interested parties that an asset has been listed
 - enter on the local land charges register the fact that an asset has been listed; and
 - in the case of registered land, apply for a restriction on the Land register.
- 4.18 Additionally, to give a strong incentive to owners to comply with the scheme, non-compliant sales will be void (ineffective), meaning that the change of ownership has not taken place (regardless of whether it has erroneously been registered on the Land Register - which would have to be rectified once the fact that the sale was void was discovered). However this penalty will not apply if the owner was unaware through no fault of their own that the land was listed when it was sold.

What the provisions do not do

- 4.19 These provisions do **not** restrict in any way who the owner of a listed asset can sell their property to, or at what price. They also do **not** confer a right of first refusal to community interest groups (unlike the Scottish scheme).³

- 4.20 The provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions - it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

5. PROPOSALS

- 5.1 The Council has previously compiled a list of locally significant buildings approved the Community Safety and Housing Portfolio Holder on 18th November 2011. Such a list has been encouraged by Central Government to identify buildings which are architecturally or historically significant. Locally Listed Buildings are not of national significance and do not have the same statutory protection, however they may merit local protection because, for example, they are the work of a local architect or have a link to a locally significant historical figure which, although not nationally noteworthy, nevertheless make a contribution to the local sense of place.
- 5.2 This list does not constitute the “list” in relation to the “Right to Bid” legislation. The “Nomination” procedures under the legislation will govern this.
- 5.3 Cabinet are asked to make any comments on how the Council might deal with the Right to Bid and agree for the Director of Regeneration and Neighbourhoods and the Chief Solicitor to put procedures in place to deal with nominations, compensation and enforcement and to maintain the list thereafter.
- 5.4 It is suggested that Cabinet agree for the Finance and Corporate Services Portfolio Holder to deal with procedures under the legislation.

6. RISK IMPLICATIONS

- 6.1 There will be risks linked with
- Challenges on nominations / exemptions
 - Compensation arrangement
 - Enforcement
 - Effects on the Council's Asset Management Strategy, particularly the disposal of assets – time delays / impact on receipts programme.
 - Potential administrative burden
- 6.2 Impact on the Council may be summarised as follows:-
- There will be a burden on the Council in administering the scheme with implications for legal and estates management teams in terms of both private

land and land owned by the Council which may be on the list of assets of community value.

- There is a possibility that the nomination of land or property owned by the Council could be used to thwart otherwise agreed arrangements for disposal of land or asset.
- The new right could be used in conjunction with the Community Right to Challenge whereby an expression of interest in running a service runs in tandem to a request to list an asset as being of community value, from which a service could be delivered.
- The Council will need to pay any compensation payments below £20,000. The Government has committed to meet compensation payments over £20,000 in a financial year. This could occur through a Local Authority paying out over £20,000 in one financial year either on one large claim or as a combined total on a number of smaller claims. However a number of small claims below the £20,000 threshold will fall directly onto local Councils and could create a significant new financial burden just as budgets are being squeezed.
- There is also the prospect of the Council becoming embroiled in disputes between community groups and land owners whilst following a new procedural approach that rigidly defines what a Local Authority must do. It is also a concern that the procedure may be open to abuse in order to gain compensation payments. The Council will need to be mindful of having effective processes in place to safeguard against such actions, which may, in any event, be difficult to prove.
- The process driven approach may also hinder democratic decision making whereby elected members, acting in the interest of a much wider electorate, that their decisions on local services fettered by a much smaller representation of local interests. It is also possible that landowners may feel disadvantaged by having their property placed on a list, and possibly subject to a moratorium on sale.

7. FINANCIAL CONSIDERATIONS

- 7.1 In considering the risks above there may be additional costs to the Council of administering the legislation, although this is difficult to ascertain at this stage. In addition there may be effects on the capital receipts received and the timing in relation to Council assets.

8. LEGAL CONSIDERATIONS

- 8.1 Robust procedures will need to be put in place to deal with the requirements of the legislation.

9. STAFF CONSIDERATIONS

- 9.1 There are no issues in respect to staff.

10. ASSET MANAGEMENT CONSIDERATIONS

- 10.1 The attention of the portfolio Holder is drawn to the Asset Management element of the Business Transformation Programme. The decision by Cabinet in January 2009 requires a commercial, proactive approach to be taken on Asset Management issues.
- 10.2 The decision to adopt a commercial approach to asset management requires the Council to realise the full value of any properties or property rights that it disposes of.
- 10.3 The legislation may have an effect on our disposal strategy as mentioned in 6.1 above.

11. SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS

- 11.1 When any asset is under consideration Community Safety issues will be addressed.

12. EQUALITY AND DIVERSITY CONSIDERATIONS

- 12.1 Nominations and the procedures to handle them will need to be open and transparent.

13. RECOMMENDATIONS

- 13.1 That Cabinet note the report and comment as necessary.
- 13.2 That Cabinet give approval for the Director of Regeneration and Neighborhoods and the Chief Solicitor to put procedures in place to receive and deal with nominations, compensation and enforcement and to maintain the list thereafter.
- 13.3 That Cabinet agree for the Finance and Corporate Services Portfolio Holder to deal with procedures under the legislation.

14. REASONS FOR RECOMMENDATIONS

- 14.1 To enable the legislation to be addressed.

15. APPENDICES AVAILABLE ON REQUEST, IN THE MEMBERS LIBRARY AND ON-LINE

15.1 There are no appendices.

16. BACKGROUND PAPERS

16.1 Cabinet Report of 6th August 2012 on Localism Act 2011 - Latest Position

17 CONTACT OFFICER

Denise Ogden
Director of Regeneration and Neighbourhoods
Civic Centre
Victoria Road
Hartlepool
TS24 8AY

Tel: (01429) 523301
Email: denise.ogden@hartlepool.gov.uk

CABINET REPORT

6th August 2012



Report of: Assistant Chief Executive

Subject: LOCALISM ACT 2011 – LATEST POSITION

1. TYPE OF DECISION/APPLICABLE CATEGORY

Non Key Decision

2. PURPOSE OF REPORT

- 2.1 The purpose of the report is to update Cabinet on the measures introduced through the Localism Bill 2011 setting out the latest position and the implications for the Council.

3. BACKGROUND

- 3.1 The Localism Act received Royal Assent on 15 November 2011. Although the Act contains a number of important measures, many of these are not yet in force. The Act contains a number of enabling provisions. These give the Secretary of State power to introduce regulations and guidance that will make the measures 'live.'
- 3.2 The government has published a 'Plain English Guide to the Localism Act' which summarises the main measures under four headings:
- new freedoms and flexibilities for local government
 - new rights and powers for communities and individuals
 - reform to make the planning system more democratic and more effective
 - reform to ensure that decisions about housing are taken locally
- 3.3 Although the Act is 497 pages long, the full implications of some of the key measures will not be clear until the Secretary of State has introduced regulations and guidance. Since the Localism Bill was first introduced a number of reports have been made to Cabinet. This report seeks to update Cabinet on the latest position with regards to the implementation of the measures contained within the Localism Act.

- 3.4 The tables on the following pages set out the range of measures contained within the Act, the latest position and implications for Hartlepool (where known) and identifies a Lead Officer. Not all of the measures included will have a direct impact on the Council and its services but they will have implications for the Borough.
- 3.5 Where appropriate the council is working (and will continue to do so where it will benefit HBC) with other authorities to formulate a consistent approach – for example under the requirement for more pay accountability a common policy statement was jointly prepared by the Tees Valley Heads of Human Resources (HR).

TABLE 1 - NEW FREEDOMS & FLEXIBILITIES FOR LOCAL GOVERNMENT

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
General Power of Competence for Local Authorities In force from 18 February 2012, regulations for parish councils published 27 March 2012.	<p>The “general power of competence” gives Local Authorities (and parish councils that meet certain minimum standards) the legal capacity to do anything an individual can do that is not specifically prohibited. It enables local authorities to:-</p> <ul style="list-style-type: none"> (i) Operate freely, providing of course that they do not break other laws; (ii) Legally do anything that an individual can do that is not specifically banned by other laws: they will not, for example, be able to impose new taxes, as other laws make clear they cannot; and (iii) Work with others in new ways to identify creative/innovative ways of reducing costs and meeting local people’s needs. <p>It does not remove any duties from Local Authorities – just like individuals they will need to continue to comply with the duties placed on them.</p> <p>Key features of the general power of competence are that:</p> <ul style="list-style-type: none"> • it can be exercised in any way whatever; unlike the ‘well-being power’ it does not need to be used to benefit a particular place or group; • it does not give local authorities power to determine their governance arrangements beyond that permitted by existing legislation; • the power may be exercised for a commercial purpose or otherwise, with or without a charge; but it does not allow a charge to be made for anything a local authority is under a duty to provide; • local authorities can charge for discretionary services on a full cost recovery basis; they may only trade on a commercial basis through a company or social enterprise; • the power is subject to any express prohibitions, restrictions and limitations in existing legislation; • the power must be exercised reasonably; • the Secretary of State can alter, repeal or revoke legislation that overlaps with the general power of competence or makes it difficult for local authorities to use it subject to safeguards designed to protect vital services; 	<p>The new power is intended to bring about:</p> <ul style="list-style-type: none"> • greater innovation • a more confident and entrepreneurial approach • the opportunity to deliver greater efficiencies • improved partnership working • the ability for councils to help communities in ways previously outside their remit <p>How the power will work in practice will ultimately depend on how it is interpreted by the courts.</p> <p>The authority’s decisions will still be open to judicial review and it is clear that this new power does not move away from the obligation to safeguard the financial interests of the authority and its residents.</p>	<p>Chief Solicitor</p> <p>Acting Chief Executive</p> <p>Director of Regeneration & Planning</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<ul style="list-style-type: none"> at any time the Secretary of State can make an order which specifies anything local authorities cannot do using the general power of competence. <p>The general power of competence will apply to all local authorities, including 'eligible' parish councils. The eligibility criteria for parish councils include a requirement for:</p> <ul style="list-style-type: none"> at least two thirds of the total number of parish councillors to be elected (rather than co-opted or appointed); the parish clerk to hold specific qualifications in local council administration; the parish clerk to complete all 'relevant training' on the general power of competence, such as training provided by provided by the National Association of Local Councils. <p>To exercise the general power of competence eligible parish councils will need to:</p> <ul style="list-style-type: none"> pass a resolution under Schedule 12 of the Local Government Act 1972 at a council meeting; pass a resolution at each annual meeting that takes place in a year of ordinary elections of parish councillors (the next date for ordinary elections is 2 May 2013). <p>Similar powers have been given to Fire & Rescue Authorities, Integrated Transport Authorities, Passenger Transport Executives, Combined Authorities and Economic Prosperity Boards.</p>		
Power for ministers to transfer the functions of local public bodies to local authorities and other 'permitted authorities'	<p>The Act gives the Secretary of State power to transfer local public functions to 'permitted authorities' – local authorities, economic prosperity boards and combined authorities. This power cannot be used to transfer functions to town/parish councils.</p> <p>'Local public functions' are the functions of public authorities that relate to the local area or people living or working in that area. They do not include the power to make regulations or pass legislation. It is not yet clear whether this will apply to the local functions of national bodies, for example Jobcentre Plus.</p> <p>A function can only be transferred if:</p>	<p>The implications will not be clear until the Secretary of State decides which functions should be transferred.</p> <p>The council should explore the use of this power once the full implications are</p>	<p>Chief Solicitor</p> <p>Acting Chief Executive</p> <p>Director of Regeneration & Planning</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
Unclear, regulations expected 3 May 2012 however still not yet available.	<ul style="list-style-type: none"> transferring it will promote economic development and increase local accountability; the function can be appropriately carried out by the permitted authority; the permitted authority gives its consent for the transfer. <p>‘Permitted authorities’ can also submit requests to the Secretary of State asking for the functions of other public bodies to be transferred to them.</p> <p>When a function is transferred the Secretary of State can:</p> <ul style="list-style-type: none"> change local authority governance arrangements; transfer current and future property, rights or liabilities from the individual or public body that previously carried out the function (this includes rights and liabilities for employment contracts). 	known, including use within the community area.	
New Arrangements for Local Authority Governance Effective from 4 th May 2012	<p>The Act introduces a further form of Local Authority governance: in addition to the leader and cabinet and mayor and cabinet models. There is now the option of adopting a committee system. Local Authorities can also propose an alternative model which can be accepted by the Secretary of State provided it meets certain criteria. This alternative model must :</p> <ul style="list-style-type: none"> - be an improvement on the current arrangements; - ensure that decisions are taken in an efficient, transparent and accountable way; - be appropriate for all councils or any particular description of council <p>The Act requires local authorities using executive arrangements to set up an overview and scrutiny committee (and sub-committees), which should:</p> <ul style="list-style-type: none"> be able to report to the executive (cabinet) or authority (full council) on any aspect of council business or any other matters that affect residents or the local area; be able to scrutinise decisions or action taken by the local authority when discharging any of its functions; have power to ask ‘partner authorities’ to have regard to its reports and recommendations; 	Council considered this issue on 21 st June 2012 and agreed to hold a Mayoral Referendum in November 2012.	Chief Solicitor Acting Chief Executive

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<ul style="list-style-type: none"> review and scrutinise flood risk management (as the council is a lead flood authority); not include any members of the executive - people who are not councillors can be included but they usually do not have any voting rights; be supported by a designated scrutiny officer who is not the head of paid service, the monitoring officer or the chief financial officer; have arrangements to allow councillors that do not sit on scrutiny committees to refer matters to them; include church and parent governor representatives with voting rights at any committee or sub-committee concerned wholly or partly with scrutinising the executive's arrangements for education. <p>Authorities operating the committee system are not required to operate a formal overview and scrutiny committee; where they do the Secretary of State may prescribe by regulations how the system is to operate.</p> <p>Councils can resolve to change their governance arrangements and implement those changes without waiting until after the next local election.</p>		
Clarification on the rules of predetermination Effective from 15 th January 2012	<p>This section of the Act clarifies how the common law concept of predetermination applies to councillors. Predetermination occurs where someone has a closed mind and is unable to apply their judgment fully and properly to an issue requiring a decision. This can lead to legal challenges and decisions being set aside.</p> <p>The Act makes it clear that a councillor is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A councillor is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it.</p> <p>However, the general position remains that, whatever their views, councillors must approach decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if persuaded that they should.</p>	Although the Localism Act attempts to provide clarification upon predetermination, it is established that any bias or prejudice which might taint a decision would be open to formal legal challenge and therefore cases appearing upon this particular aspect of the Act are awaited.	Chief Solicitor

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
<p>New approach to local authority standards and abolition of the Standards Board regime</p> <p>Standards Board for England abolished on 1 April 2012, Relevant Authorities (Disclosable Pecuniary Interests) Regulations, 2012 are effective from 1st July 2012.</p>	<p>The Act abolishes the current standards regime, including the statutory model code of conduct for councillors, the national regulatory body, Standards for England, local authority statutory standards committees and the jurisdiction of first tier tribunals in relation to appeals on code of conduct complaints.</p> <p>It places a duty on all relevant authorities (including parish councils) to promote and maintain high standards of conduct by members and voting co-opted members. Local authorities may establish a standards committee to assist them in discharging this duty.</p> <p>Local authorities, including parish councils are required to adopt a code of conduct which:</p> <ul style="list-style-type: none"> is consistent with the principles of selflessness; integrity; objectivity; accountability; openness; honesty and leadership; includes such provision as the authority considers appropriate for the registration and disclosure of pecuniary and non-pecuniary interests. Regulations dealing with the registration and disclosure of 'disclosable pecuniary interests' are expected 1 July 2012. Breach of the requirements relating to disclosable pecuniary interests without reasonable excuse will amount to a criminal offence. <p>The Monitoring Officer is required to establish and maintain a register of members' interests for the principal authority and all parish councils in its area. This must be available for inspection and published on the principal authority's website and on the parish council's website if it has one.</p> <p>Principal authorities must put in place arrangements for investigating and determining complaints under the code of conduct and deciding what action to take where there is a breach of the code. This includes the appointment of at least one independent person whose views must be sought and taken into account before a decision is made on an allegation that has been investigated. A councillor who is the subject of a complaint may also consult the independent person. There are detailed rules on who is eligible for appointment as an independent person. Complaints against members of parish councils must be dealt with under the</p>	<p>The Standards Committee has considered the implications for Hartlepool and a draft Code of Conduct based on the LGA proposed model. Further regulations and transitional arrangements are now in place, reports considered by both Standards and Constitution Committees and a report will be considered by Council on 2nd August 2012.</p>	<p>Chief Solicitor</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>arrangements adopted by their principal authority. Any consequential action in the event of a breach of the code rests with the parish council.</p> <p>Local authorities (including parish councils) may grant dispensations on the grounds set out in the Act to enable councillors to participate in or vote at meetings where they have a disclosable pecuniary interest.</p> <p>Transitional regulations on the transfer to the new arrangements are awaited.</p> <p>All local authorities must publicise the adoption, revision and replacement of a code of conduct.</p>		
<p>Requirement for more pay accountability</p> <p>In force from 15 January 2012.</p>	<p>Local authorities and fire authorities must prepare an annual statement for each financial year which sets out the authority's policies on:</p> <ul style="list-style-type: none"> the pay of its chief officers (head of paid service, monitoring officer, statutory and non-statutory chief and deputy chief officers); the pay of its lowest paid employees (including the definition of lowest paid employees and reasons for adopting that definition); the relationship between the pay of chief officers and employees who are not chief officers . <p>The council's pay policy statement for the financial year 2012-13 must be approved by full council before 31 March 2012 and published as soon as possible afterwards. The government has published guidance for local authorities.</p>	<p>A common policy statement was jointly prepared by the Tees Valley Heads of HR and adapted to reflect local arrangements.</p> <p>Council approved the Pay Policy Statement at their meeting on 12th April 2012.</p>	<p>Chief Solicitor</p> <p>Head of HR</p>
<p>Power for Ministers to require public authorities to pay EU financial sanctions</p> <p>Unclear, consultation closed 22 April</p>	<p>The Act gives government ministers power to require a 'public authority' to pay all, or part, of a financial sanction imposed on the UK by the European Court of Justice for failure to take action to remedy a breach of EU law.</p> <p>A 'public authority' is a local authority, or any other body or person that has non-devolved public functions.</p> <p>To require a public authority to pay a financial sanction, ministers will need to:</p> <ul style="list-style-type: none"> issue an order designating a named public authority in relation to any specific breach of EU law – this should describe the activities of the public authority; obtain approval for the order from both houses of parliament - only acts or 	<p>Consultation by the Secretary of State on the policy statement to be followed by ministers and independent panels that will use these powers ended on 22nd April 2012 and as yet there have been no further announcements.</p>	<p>Chief Solicitor</p> <p>Chief Finance Officer</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
2012.	<p>omissions which take place after the order has been issued can be taken into account by ministers when they pass on a financial sanction;</p> <ul style="list-style-type: none"> • set up an independent advisory panel; • issue a warning notice; • take into account an evidenced (and published) report from the independent advisory panel with recommendations on the apportionment of the sum to be paid and any future penalties under the EU financial sanction; • invite representations from the public authority on its ability to pay and the potential impact on its finances • issue a final notice. 		

TABLE 2 - NEW RIGHTS & POWERS FOR COMMUNITIES & INDIVIDUALS

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
<p>More control for Local Authorities over business rates/non domestic rates</p> <p>Cancellation of backdated business rates in force from 15 January 2012, discretionary relief in force from 1 April 2012.</p>	<p>The Act gives local authorities power to provide discretionary business rates relief in any circumstance subject to two conditions:</p> <ul style="list-style-type: none"> that granting relief can be considered 'reasonable' from the perspective of council tax payers in the local area; that the authority has regard to any relevant guidance issued by the Secretary of State – the Secretary of State has not issued any new guidance, but the current guidance (which relates to the previous provisions), is very restrictive and it is unclear whether this will be revised. <p>The House of Commons has issued a briefing note on the new power for local authorities to provide discretionary business rate relief in any circumstance. The briefing note suggests that:</p> <ul style="list-style-type: none"> local authorities must be careful not to break state aid rules; the government will continue to part fund discretionary rate relief for small rural businesses, charities, non-profit organisations and individuals experiencing hardship; any discretionary rate relief for other ratepayers will need to be funded locally. <p>The Act also:</p> <ul style="list-style-type: none"> introduces a new small business rate relief scheme, which no longer requires ratepayers to apply for small business rate relief; gives the Secretary of State power to introduce conditions to cancel backdated business rates if a property is incorrectly shown in a local business rates list compiled on 1 April 2005 (in force from 15 January 2012); changes the ballot requirements for proposals to introduce a Business Rate Supplement. Business Rate Supplements allow upper tier local authorities to introduce an additional charge on business rates which can be used to fund specific projects in their local area. A ballot of everyone eligible to vote in the local area is now required for all Business Rate Supplements. 	<p>A report went to Cabinet on 9 July 2012 looking at Business Rates Retention and Localising Support for Council Tax. The report is sought cabinet approval for a response to the Government's consultation on the subject. More details are needed on the proposals (i.e. after the consultation) before implications are known. Once proposals are known there may be implications that relate to the provision of discretionary business rates relief in terms of budget shortfalls and the requirement to increase revenue/ decrease expenditure in other areas.</p>	<p>Chief Finance Officer</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	Currently a ballot is only needed if the money raised from the supplement will be used to fund more than a third of the total cost of the project.		
Referendums on 'excessive' council tax increases In force now for billing authorities and upper tier authorities, not in force for parish councils until at least April 2013.	<p>The Act removes the Secretary of State's power to cap council tax increases and introduces a new power for the Secretary of State to produce a set of principles which will be used to decide whether local authority council tax increases are 'excessive.' If a proposed council tax increase is considered 'excessive,' the local authority will be required to hold a referendum.</p> <p>The Secretary of State can set different principles for different types of local authorities. For example a different set of principles could be used to decide whether a council tax increase is 'excessive' for unitary councils and district councils. The principles must include a comparison between the proposed amount of council tax and the previous year's council tax. The principles also need to be approved by the House of Commons.</p> <p>Billing authorities (for example unitary authorities, upper tier authorities (such as county councils) and local precepting authorities (such as town and parish councils) that want to set 'excessive' council tax increases will have to:</p> <ul style="list-style-type: none"> hold a referendum within a time-frame specified by the Secretary of State - local precepting authorities will need to notify the billing authority of the requirement to hold a referendum and the referendum will be arranged by the billing authority which can recover the costs of holding it from the local precepting authority; make 'substitute' council tax calculations which are below the level considered 'excessive' – these will be used as the basic amount of council tax if the referendum is rejected; inform the Secretary of State of the result of the referendum. <p>If a local authority is unable to carry out its functions or balance its budget without setting an 'excessive' council tax increase, the Secretary of State can:</p> <ul style="list-style-type: none"> remove the requirement to hold a referendum for one financial year; set the amount of council tax for the local authority – until the local authority 	Report to Cabinet on 6 Feb 2012 stated that correspondence received from DCLG in December 2011 advised that a proposed increase of more than 3.5% (HBC) would need a mandate through a local referendum – results of which would be binding. Regulations covering the conduct of Council Tax referendums would be laid before Parliament for approval and correspondence received from DCLG have stated these will be "long and complex". Precise implications for the authority will not be known until regulations have been published.	Chief Finance Officer Chief Solicitor

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>has changed its calculations to match the amount of council tax set by the Secretary of State, it cannot transfer any money from the collection fund to its general fund (where this applies to a local precepting authority, the billing authority will not be able to transfer any money).</p> <p>The Act changes the way basic amounts of council tax are calculated by:</p> <ul style="list-style-type: none"> removing the obligation to calculate a 'budget requirement' (the amount that the local authority requires from council tax, revenue support grant, redistributed business rates and other income sources), and replacing it with an obligation to calculate a 'council tax requirement' (the amount that the local authority requires from council tax to finance its budget for the year based on expected outgoings and income) introducing a requirement for billing authorities to calculate their basic amount of council tax by dividing the council tax requirement by the council tax base. <p>The Secretary of State can make regulations to alter the rules for calculating the council tax requirement and council tax base.</p>		
<p>Community right to challenge</p> <p>Statutory Guidance published in May 2012.</p>	<p>The community right to challenge enables a "relevant body" to make an expression of interest to a relevant authority (including the Council) to take over the running of relevant services. Relevant bodies as set out in the statutory guidance include voluntary and community bodies, charities, parish councils, two or more staff of the authority concerned and any other person or body specified by the Secretary of State by regulations.</p> <p>The statutory guidance sets out:</p> <ul style="list-style-type: none"> what relevant authorities may require an expression of interest to contain; exclude certain types of services from the community right to challenge; change the types of bodies that are able to use and have to respond to the community right to challenge amend the process local authorities must follow when they receive expressions of interest. 	<p>The Council is currently:</p> <ul style="list-style-type: none"> - considering the procedures & protocols required to deal with "challenges"; - reviewing the constitution/contract procedure rules in light of the Act; - considering whether to open up a "window of opportunity". 	<p>Director of Regeneration & Planning</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>Local authorities must consider expressions of interest if they are submitted in writing by a 'relevant body' and comply with requirements outlined by the Secretary of State in regulations.</p> <p>Although expressions of interest can be submitted at any time, local authorities can:</p> <ul style="list-style-type: none"> • set time periods when expressions of interest can be submitted for a particular service - these time periods must be published on the local authority's website; • refuse to consider expressions of interest submitted outside of these time periods - if no time period is specified expressions of interest can be submitted at any time. <p>The Act outlines the procedure local authorities should follow after receiving an expression of interest. They should:</p> <ul style="list-style-type: none"> • publically accept, change or reject the expression of interest in writing – an expression of interest can be altered if the local authority would otherwise reject it and the body that submitted it agrees to the changes; • consider how the expression of interest could promote or improve the social, economic and environmental well-being of the local area. <p>When an expression of interest is accepted a local authority must:</p> <ul style="list-style-type: none"> • carry out an open procurement exercise for the service and consider how the procurement exercise could promote or improve the social, economic and environmental well-being of the local area; • let the body know the minimum and maximum period between accepting the expression of interest and starting the procurement exercise; • publish details of the service specification on its website, <p>The Secretary of State can also provide advice and assistance (including financial assistance, education or training) for 'relevant' bodies wishing to use the community right to challenge.</p>		

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
<p>Community right to bid for assets of community value</p> <p>Regulations in Parliament in April and subject to agreement by Parliament regulations expected to come into force in June/July 2012.</p>	<p>The Act places a legal duty on all local authorities to maintain a publicly available list of assets of community value. A building or land in a local authority's area is an asset of community value if in the opinion of the authority:</p> <ul style="list-style-type: none"> current primary use of the building/land or use of the building/land in the recent past furthers the social well-being or social interests (cultural, recreational, or sporting interests) of the local community; it is realistic to think that now or in the next five years there could continue to be primary use of the building/land which will further the social well-being or social interests of the local community. <p>Local authorities will have some say over the form of the list. Listed assets will be removed from the list after five years. Land and buildings can only be listed as community assets if this is permitted by regulations made by the Secretary of State and a parish council or 'voluntary or community body' with a 'local connection' has submitted a 'community nomination.' Listed assets will also need to be entered on the local land charges register.</p> <p>Owners of listed assets cannot dispose of them without:</p> <ul style="list-style-type: none"> letting the local authority know that they intend to sell the asset or grant a lease of more than 25 years; waiting until the end of a six week 'interim moratorium' period if the local authority does not receive a request from a community interest group to be treated as a potential bidder; waiting until the end of a six month 'full moratorium' period if the local authority does receive a request from a community interest group to be treated as a potential bidder. <p>The owner does not have to sell the asset to the community group.</p> <p>There is also a 'protected period' (18 months from the time that the owner notified the local authority of their intention to dispose of the asset) – during this time there can be no further moratoriums.</p> <p>Local authorities have a legal duty to:</p> <ul style="list-style-type: none"> consider community nominations and list buildings/ land as community 	<p>The government conducted consultation in 2011, requesting views on which elements of the right to buy should be prescribed in regulations – the responses indicates that regulations will set out a number of elements for the detailed operation of this. Once regulations are published implications for HBC may become clearer.</p>	<p>Director of Regeneration & Planning</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>assets if they meet the criteria;</p> <ul style="list-style-type: none"> • write to unsuccessful community nominators and explain why they have decided not to list the building/land as a community asset; • give written notice of the inclusion or removal of buildings/land from the list of community assets to the owner of the building/land, the occupier of the building/land, the community nominator and anyone else specified in regulations made by the Secretary of State; • draw the owner's attention to the consequences of their building/ land being listed as a community asset and the right to ask for the decision to be reviewed by the local authority; • maintain a publically available list of unsuccessful community nominations, which explains why these nominations were unsuccessful; • make the community nominator and local residents aware when the owner of a listed asset gives notice of their intention to sell – the local authority is also responsible for updating the entry for the listed asset to include the owners intention to sell and dates for the end of the 'interim' and 'full' moratorium periods and 'protected period'; • notify the owner of a listed asset of a written request from a community interest group to be treated as a potential bidder. <p>The Secretary of State has powers to introduce regulations that set out:</p> <ul style="list-style-type: none"> • the types of buildings/land that are not of community value – regulations may be based on the owner of the building/land, the occupier of the building/land, the nature of the building/land, the use to which the building/land has been, is being or could be put and the price or value of the building/land • the contents of the 'community nomination' and the exact meaning of 'voluntary or community body with a local connection' and 'community interest group' • the procedures local authorities must follow when deciding whether to list buildings or land as community assets • the procedures local authorities must follow when reviewing decisions to list buildings or land as community assets • who will be eligible for compensation, how compensation will be calculated 		

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>and who will be required to pay compensation (depending on the regulations this may apply to local authorities)</p> <ul style="list-style-type: none">• how enforcement action will be carried out		

TABLE 3 - REFORM TO MAKE THE PLLANING SYSTEM MORE DEMOCRATIC AND MORE EFFECTIVE

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
Abolition of Regional Spatial Strategies In force now, abolition order expected 30 April 2012.	The Act abolishes responsible regional planning authorities and the regime for regional planning strategies. At present regional planning strategies remain in force. It also gives the Secretary of State power to order the abolition of all or part of any previous structure plan policies that were saved as part of the transition to core strategies. Structure plan policies provided a strategic policy framework for land use planning, development and transport.	<p>The Localism Act 2011 gave delegated authority to ministers to revoke Regional Spatial Strategies (RSS) – but they must do this through a statutory instrument. The Act itself does not revoke the strategies.</p> <p>Environmental assessments relating to revoking the North East RSS are currently in progress – once they are complete further stages towards revocation will occur.</p> <p>At present North East RSS is still part of the Hartlepool Development Plan. However, Hartlepool has devised its own policies for housing and employment land based on local up to date evidence.</p>	Director of Regeneration & Planning
New legal duty to co-operate when planning sustainable development	The Act places a legal duty on local planning authorities, county councils and other statutory bodies (to be defined in regulations) to co-operate with each other. They will be required to: <ul style="list-style-type: none"> engage constructively, actively and on an ongoing basis when preparing development plans, marine plans and other local development documents 	There are very strong reasons for neighbouring local authorities, or groups of authorities, to work together on planning issues	Director of Regeneration & Planning

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
In force now.	<p>for 'strategic' activities, such as sustainable development or infrastructure that would have a significant impact on at least two planning areas;</p> <ul style="list-style-type: none"> • have regard to the activities of each other; • consider whether to consult on, prepare and publish agreements on joint approaches to 'strategic' planning activities; • consider whether to prepare joint local development documents (this only applies to local planning authorities); • comply with all guidance issued by the Secretary of State on how to comply with the legal duty to cooperate. 	<p>in the interests of all their local residents. This might include working together on environmental issues (like flooding), public transport networks or major new retail parks.</p> <p>The duty is set out in section 110 of the Localism Act and requires:</p> <ul style="list-style-type: none"> • Councils and public bodies to 'engage constructively, actively and on an ongoing basis' • Councils to have regard to the activities of other bodies; and • Councils to consider joint approaches to plan making <p>The National Planning Policy Framework sets out in detail how planning strategically across boundaries should be achieved. In support of the Local Plan for the upcoming public inquiry a statement of Compliance with the Duty to</p>	

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
		Cooperate has been produced detailing all the relevant work that HBC has done to date.	
<p>Changes to the approval process for local development schemes and development plan documents</p> <p>In force from 15 January 2012.</p>	<p>Local development schemes set out the timetable for local planning authorities to produce development plan documents which are used to make decisions on planning applications. The Act changes the way local development schemes are approved by:</p> <ul style="list-style-type: none"> removing the requirement for local planning authorities to submit local development schemes to the Secretary of State; introducing a new requirement for local planning authorities to publish their local development scheme, including any changes to the scheme and up to date information on progress against the timetable; limiting the powers of the Secretary of State to make changes to local development schemes – the Secretary of State can only order changes for the purpose of ensuring ‘effective coverage’ of the local authority’s area. <p>The Act also changes the process for approving and withdrawing development plan documents:</p> <ul style="list-style-type: none"> if it is reasonable to conclude that development plan documents are sound and meet the statutory requirements, the planning inspector must recommend that they are adopted; if the local planning authority prepared the documents correctly, but the documents are not sound or do not meet the statutory requirements, the local planning authority can ask the planning inspector to recommend changes that would make the documents suitable for adoption – the planning inspector can only recommend changes if he or she is requested to by the local planning authority; local planning authorities can change development plan documents after the inspector has recommended approval as long as the changes do not ‘materially affect’ the policies in the development plan; if the inspector recommends non-adoption and changes to the development plan documents that would make it suitable for adoption, local 	<p>On 25th June 2012 Cabinet considered a number of changes to the emerging Core Strategy to ensure it will be compliant with the new National Planning Policy Framework.</p>	<p>Director of Regeneration & Planning</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>planning authorities can adopt the documents with the main changes recommended by the inspector and any other changes that do not 'materially affect' the policies in the modified development plan;</p> <ul style="list-style-type: none"> • local planning authorities can withdraw a development plan document any time before its adoption without a recommendation from the planning inspector or an order from the Secretary of State; • the Secretary of State still has powers to order a local planning authority to withdraw a development plan document before it is adopted; • local planning authorities will no longer be required to submit annual reports on the implementation of local development schemes and development plan documents to the Secretary of State - instead they will need to publish this information annually. <p>The new process will apply to all development plan documents that are adopted after the provisions come into force (after 15 January 2012), including those that have been inspected.</p>		
<p>Reform the Community Infrastructure Levy</p> <p>In force from 6 April 2012, regulations expected 25 July 2012.</p>	<p>The Community Infrastructure Levy (CIL) allows local planning authorities to charge a levy on new development in their area in order to raise funds to meet the associated demands placed on the area and enable growth.</p> <p>The Act changes the process for setting and approving Community Infrastructure Levy charges by introducing:</p> <ul style="list-style-type: none"> • a requirement for local planning authorities to set their charging schedules based on 'appropriate available evidence' (to be determined in regulations by the Secretary of State); • a requirement for the independent examiner to consider whether the local planning authority has complied with the CIL regulations when setting the charging schedule: <ul style="list-style-type: none"> • if the local planning authority has not complied with the regulations and no changes could be made to the charging schedule to make it compliant the examiner must recommend that the charging schedule is rejected - local planning authorities cannot adopt a charging schedule if the examiner has recommended rejection 	<p>On 25th June 2012 Cabinet approved the appointment of external consultants to undertake viability testing on a range of development types to illustrate whether it is viable to implement a CIL in Hartlepool.</p>	<p>Director of Regeneration & Planning</p> <p>Chief Finance Officer</p> <p>Corporate Management Team</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<ul style="list-style-type: none"> • if changes could be made to the charging schedule to make it compliant with the regulations, the examiner must recommend that the charging schedule is approved with these changes • very limited discretion for local planning authorities to choose how they respond to changes suggested by the examiner: <ul style="list-style-type: none"> • a local planning authority must have regard to the reasons for the changes suggested by the examiner and can only introduce changes that are 'sufficient and necessary' to ensure compliance with the regulations identified by the examiner. They will also be required to publish a report explaining how the charging schedule complies with the regulations. • a local planning authority cannot approve a charging schedule if the examiner recommends rejection. <p>The Act amends the purpose of the Community Infrastructure Levy by:</p> <ul style="list-style-type: none"> • explicitly requiring the CIL regulations to make sure local planning authorities will not be able to impose levy charges that make it 'economically unviable' to develop their areas because landowners and developers will be unable to meet the costs of the levy; • widening the definition of 'infrastructure' to include the future maintenance and operating costs of infrastructure; • extending the permitted uses of levy receipts so that they can be applied to a matter that supports development by addressing the demands that it places on the area; • allowing the CIL regulations to require local planning authorities to consider the costs of, and expected sources of funding for, anything other than infrastructure that will address the demands that development places on an area. <p>The Act also introduces a legal duty to pass levy receipts to other bodies specified by the CIL regulations. The regulations will:</p> <ul style="list-style-type: none"> • ensure levy receipts passed to other bodies are only used to support the provision, improvement, replacement, operation or maintenance of infrastructure; or, anything else that addresses the demands development 		

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>places on an area;</p> <ul style="list-style-type: none"> provide details of how levy receipts can be passed to other bodies, including the monitoring, reporting and accounting responsibilities of the local planning authority and bodies that have been given CIL receipts. <p>A government consultation on the draft community infrastructure regulations closed on 30 December 2012.</p>		
<p>Introduction of Neighbourhood Planning</p> <p>In force from 6 April 2012, general regulations passed 6 March 2012, regulations for referendums expected July 2012.</p>	<p>The Localism Act makes a number of changes to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 to introduce neighbourhood planning. This includes:</p> <ul style="list-style-type: none"> <i>neighbourhood development plans</i> – these allow parish councils (or ‘neighbourhood forums’ if there is no parish council) to lead on the development of local policies for the development and use of land in a neighbourhood area; <i>neighbourhood development orders</i> - orders prepared by parish councils (or ‘neighbourhood forums’ if there is no parish council) which grant planning permission for specific development in a particular neighbourhood area. <p>The Act places a legal duty on local planning authorities to:</p> <ul style="list-style-type: none"> designate ‘neighbourhood areas’ when parish councils or bodies capable of being designated as ‘neighbourhood forums’ where there is no Parish Council (comprised of a minimum of 21 individuals who live or work in the neighbourhood area, including unitary councillors) apply to be designated as neighbourhood areas; have regard to the ‘desirability’ of designating existing parish council areas as neighbourhood areas; follow the procedure for considering neighbourhood development plans and orders outlined in the Act and regulations from the Secretary of State. <p><u>Neighbourhood development plans:</u> Unless there are other material considerations, decisions on applications for planning permission must be made in accordance with neighbourhood</p>	<p>Hartlepool is currently taking part in a pilot for Neighbourhood Planning working with the Rural Parishes.</p> <p>Neighbourhood planning will be a potentially onerous and resource intensive process for the council and participating town/parish councils.</p> <p>Full legislation is not currently in place for Neighbourhood Planning – the government is expected to publish the remaining regulations on 25 July 2012.</p>	<p>Director of Regeneration & Planning</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>development plans. According to the draft National Planning Policy Framework (NPPF) neighbourhood development plans must conform to the Local Plan, i.e. the Core Strategy.</p> <p>The Act provides detail on the expected form and contents of neighbourhood development plans and gives the Secretary of State power to make further regulations. A neighbourhood development plan must:</p> <ul style="list-style-type: none"> • specify the period for which it has effect; • not include any references to 'excluded development' (including nationally significant infrastructure projects and minerals and waste); • only relate to one neighbourhood area – a neighbourhood area cannot have more than one neighbourhood development plan. <p><u>Neighbourhood development orders:</u></p> <p>Neighbourhood development orders cannot apply to more than one neighbourhood area and the local planning authority cannot consider more than one neighbourhood development order for the same neighbourhood area at the same time. Planning permission under a neighbourhood development order can be granted:</p> <ul style="list-style-type: none"> • unconditionally; or, • subject to conditions which specify that the local planning authority must give approval for some of the work permitted under the order - regulations from the Secretary of State may allow parish councils to give approval for work permitted under neighbourhood development orders. <p>Neighbourhood development orders can be revoked by the Secretary of State or the local planning authority (with the consent of the Secretary of State or to correct errors in the development order). Legal challenges to neighbourhood development orders can only take place if a claim for judicial review is filed within six weeks of the day when the decision was published.</p> <p><u>Procedure for introducing neighbourhood development plans and orders:</u></p> <p>The procedures for introducing neighbourhood development plans and making neighbourhood development orders are very similar. Proposals for neighbourhood</p>		

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>development plans and orders will need to be submitted to the local planning authority by parish councils or 'neighbourhood forums'.</p> <p>The Act gives the Secretary of State power to make regulations on:</p> <ul style="list-style-type: none"> the expected standards for draft neighbourhood development plans or orders, including documents and information that must accompany proposals for plans or orders; consultation which must be undertaken by the parish council or neighbourhood forum before proposals for plans or order are submitted to the local planning authority. <p>It also requires local planning authorities to:</p> <ul style="list-style-type: none"> give appropriate advice and non-financial assistance to parish councils or neighbourhood forums to help them make proposals for neighbourhood development plans and orders; check whether the application meets the requirements of legislation and regulations; submit the draft neighbourhood development plan or order for 'independent examination' by an independent person with appropriate qualifications who has no interest in the land affected by the draft plan or order (the local planning authority may be required to pay the independent person for their services). The independent examiner will consider whether the plan or order is appropriate in relation to national policy, the strategic policies of the local development plan for the area (i.e. the Core Strategy once adopted) and EU obligations; hold a referendum on the neighbourhood development plan or neighbourhood development order in the relevant neighbourhood area (this may include an additional referendum if the neighbourhood area has been designated as a 'business area'); bring the neighbourhood development plan into force or make the neighbourhood development order as soon as reasonable practicable if more than half of those voting in each relevant referendum have voted in favour of the plan. This does not apply if the planning authority considers that bringing the plan into force would be incompatible with any EU 		

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>obligations or any rights under the Human Rights Act. In these circumstances the planning authority must follow a procedure set out in regulations by the Secretary of State;</p> <ul style="list-style-type: none"> publish all decisions to accept or reject neighbourhood development plans, including the reasons for making the decision; follow the procedure for dealing with neighbourhood development order requests set out in regulations from the Secretary of State (the government is currently consulting on these regulations). <p>Local authorities can refuse to consider 'repeat proposals.' A proposal is a 'repeat proposal' if a similar proposal has been refused by the local authority or the subject of an unsuccessful referendum within the last two years and there has been no 'significant change' in national policies or guidance or the strategic policies of the local development plan.</p> <p><u>Charges to recover costs incurred by neighbourhood planning</u></p> <p>The Act gives the Secretary of State power to make regulations on the introduction of charges to cover expenses incurred by local planning authorities when exercising their neighbourhood planning functions.</p> <p>A charge will need to be paid to a local planning authority when development under a neighbourhood planning order is commenced. Regulations may allow liability for the charge to be passed to land owners and developers before or after the charge becomes due.</p> <p>Regulations will make provision for enforcement to collect unpaid charges and unpaid charges will be treated as a collectible civil debt due to the local planning authority.</p> <p>The Act also gives the Secretary of State power to provide financial assistance for neighbourhood planning, for example to help a neighbourhood forum draft a neighbourhood development plan or order.</p>		

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
<p>Requirement for developers to consult local communities before submitting applications for planning permission</p> <p>Regulations expected 1 October 2012</p>	<p>The Act introduces a requirement for developers to consult local communities before submitting applications for planning permission.</p> <p>Before submitting planning applications developers will need to:</p> <ul style="list-style-type: none"> publicise the proposed application in a way that is likely to bring it to the attention of the majority of people who live near the land – this must include information about the length of the consultation and how the developer can be contacted; consult anyone specified in the development order; have regard to any advice about good practice for consultation provided by the local planning authority; consider any comments or responses received during the consultation when deciding whether to make any changes to their proposed planning application; submit an account of the consultation to the local authority with their planning application. <p>The Act also gives the Secretary of State power to introduce regulations which set out the detail of how developers should consult local communities.</p>	<p>DCLG have stated the requirement for pre-application consultation will initially only apply to major planning applications – that is developments with more than 200 units and other developments that provide 10,000 square metres or more new floor space. Thresholds will be officially specified by secondary legislation. Due to size of thresholds the implications for Hartlepool may be small.</p>	<p>Director of Regeneration & Planning</p>
<p>Changes to planning enforcement</p> <p>In force from 6 April 2012</p>	<p>The Act allows local authorities to refuse to consider planning applications for development that has already taken place in circumstances where an enforcement notice was issued for all or part of the development before the planning application was submitted. It also changes the right to appeal against enforcement notices to prevent appeals against similar developments using both planning application and enforcement routes.</p> <p>The Act allows local planning authorities to take enforcement action against concealed 'breaches of planning control' (development that has taken place without planning permission or where the developer has failed to comply with the conditions of planning permission) by:</p> <ul style="list-style-type: none"> applying to the magistrates' court for a 'planning enforcement order' – this must be within six months of the day when the local planning authority discovered the breach of planning control and the magistrates' court can 	<p>The council will be able to refuse to consider planning applications where:</p> <ul style="list-style-type: none"> an enforcement notice has already been issued; or the applicant is still able to appeal an earlier decision not to grant planning permission. <p>This may reduce delay because work will not be</p>	<p>Director of Regeneration & Planning</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>only make a 'planning enforcement order' if they are satisfied that the individual has deliberately concealed the breach of planning control;</p> <ul style="list-style-type: none"> • serving a copy of the application for a planning enforcement order on the individual that will be given an enforcement notice if the order is granted; • including all 'planning enforcement orders' in their enforcement registers. <p>The Act raises the maximum penalty for failing to comply with a notice on the conditions of planning permission from level three on the standard scale (currently £1,000) to level four (currently £2,500). It also gives local planning authorities powers to:</p> <ul style="list-style-type: none"> • remove structures which are used for illegal advertisements after a removal notice has been served; • take action against persistent fly-posting on surfaces; • remove signs (including graffiti) that they consider offensive or detrimental to the amenity of the area after an action notice has been served; • remove signs or graffiti at the expense of the owner of a building or land when requested to by the owner. 	<p>duplicated across a planning appeal and an enforcement appeal.</p> <p>The council will be able to take action against concealed breaches of planning control after the normal time limits for enforcement have expired. This will act as a strong deterrent and reduce the number of unauthorised developments.</p>	
<p>Changes to the system for approving nationally significant infrastructure projects</p> <p>In force from April 2012.</p>	<p>The Act makes a number of changes to the regime for approving nationally significant infrastructure projects. The changes include:</p> <ul style="list-style-type: none"> • abolishing the independent Infrastructure Planning Commission (IPC), transferring all of the IPCs property, rights and liabilities to the Secretary of State (this will be treated as a relevant transfer for the purposes of the TUPE Regulations 2006) and giving the Secretary of State powers to make transitional arrangements for applications received before or after the abolition of the IPC; • giving the Secretary of State the right to appoint an inspector (or panel of inspectors) to examine applications for nationally significant infrastructure projects and make recommendations to the Secretary of State and allowing the Secretary of State to charge fees for the costs incurred in considering applications for planning permission for major infrastructure projects; • requiring the House of Commons to approve all national policy statements and amendments that significantly ('materially') change existing national policy statements- this must be done within 21 sitting days unless the 	<p>The potential is that decision making on a new Nuclear Power Station would be taken out of the Council's hands. However, the Council would be a key consultee in any decision making process.</p>	<p>Corporate Management Team</p>

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
	<p>Secretary of State requests an extension (up to another 21 sitting days);</p> <ul style="list-style-type: none"> clarifying the rules for consultation with local planning authorities - where a national policy statement has been changed consultation only needs to be carried out on the changes and not on the whole of the policy statement; giving the Secretary of State powers to: <ul style="list-style-type: none"> change the types of consents that are automatically granted when consent is granted for a nationally significant infrastructure project, such as consent under the Electricity Act; decide that infrastructure projects below the threshold set in the Planning Act 2008 are nationally significant and require development consent – this power can only be used when the Secretary of State receives a written request and the Secretary of State is required to make a decision with 28 days; allow applicants (or proposed applicants) to serve a notice on the landowner requiring them to write to the applicant with the name and address of anyone with an interest in the land or anyone who may be entitled to make a relevant claim for compensation (e.g. for compulsory purchase of the land or a reduction in the value of the land because of public works); require successful applicants for development consent to gain approval throughout the project from the Secretary of State or the local planning authority. no longer requiring applicants for development consent to publish a statement setting out how local people will be consulted on the proposed application – a statement of when and where the statement can be viewed will still need to be published in a local newspaper; extending the ability of applicants to compel landowners to allow them to enter their land to survey it – this now applies regardless of whether the applicant is likely to ask for compulsory purchase of the land. 		
Clarification that 'local finance considerations' can be taken into	The Act amends the Town and Country Planning Act 1990 to make it clear that local planning authorities can take 'local finance considerations' into account when assessing planning applications.	The Localism Act makes amendments to the Town and Country Planning Act 1990 as to allow	Corporate Management Team

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
<p>account when assessing planning applications</p> <p>In force from 15 January 2012</p>	<p>Local finance considerations are defined as:</p> <ul style="list-style-type: none"> grants or financial assistance that are, could be or would be provided to the local authority by a government minister, such as the New Homes Bonus; money that the local authority has received, will receive or could receive from the Community Infrastructure Levy. 	<p>consideration of “any local finance considerations, so far as material to the application” when determining planning applications.</p> <p>The Act describes local finance considerations as</p> <ol style="list-style-type: none"> a grant or other financial assistance that has been, or will, or could be provided to a relevant authority by a Minister of the Crown; or sums that a relevant authority has received, or will, or could receive, in payment of Community Infrastructure Levy <p>It is important to note that to use local finance considerations in decision making on planning application it must comply with the descriptions given above.</p>	

TABLE 4 - REFORM TO ENSURE DECISIONS ABOUT HOUSING ARE TAKEN LOCALLY

Measure	Summary of changes	Implications for HBC	Lead Officer(s)
<p>Changes to the system for allocating social housing</p> <p>Unclear, consultation on draft statutory guidance and draft regulations on preference for armed service personnel closed 30 March 2012. Still awaiting statutory guidance and final regulations.</p>	<p>The Act gives local housing authorities power to decide the classes of people that are eligible for social housing and the factors that will be considered when allocating housing. However, the Act also gives the Secretary of State power to make regulations that specify:</p> <ul style="list-style-type: none"> the classes of people that should be given priority; factors that local housing authorities cannot take into account when allocating housing. <p>Local housing authorities will have a legal duty to:</p> <ul style="list-style-type: none"> make sure people who apply to be allocated social housing are informed of their right to free information, advice and assistance; maintain a social housing 'allocation scheme' which sets out the housing authority's priorities and procedures for allocating social housing; not allocate social housing to anyone who is already a secure, introductory or assured tenant of private registered provider of social housing or a registered social landlord unless a change of accommodation is needed and has been requested by that individual and the housing authority is satisfied that the individual should be given 'reasonable preference'. * <p>*This takes existing social housing tenants who are not in housing need off the allocations system and leaves them to be dealt with through a system of internal transfers. Although the Act itself does not require it, the changes introduced by the Act imply that registered providers, including the council, will have to rethink their approach to transfers, with a certain proportion of their vacancies being made available exclusively for existing tenants who have no priority status.</p> <p>The social housing allocation scheme must:</p> <ul style="list-style-type: none"> include a statement of the authority's policy on offering people a choice of housing accommodation or the opportunity to express a preference about the housing allocated to them; be framed so as to secure that 'reasonable preference' is given to people 	<p>Detailed analysis behind the allocation of social housing is awaited following recent consultation that ended on 30 March 2012.</p>	<p>Corporate Management Team</p>

	<p>who are homeless, owed a duty by any local housing authority or already occupy accommodation secured by a local housing authority, living in unsatisfactory housing conditions, who need to move on medical or welfare grounds (including grounds that are related to a disability) and who need to move to a particular place in the local area if failure to do so would cause hardship to themselves and others;</p> <ul style="list-style-type: none"> • explain the authority's priorities for deciding factors that will be taken into account when allocating social housing – these could include the financial resources available to the person to meet their housing costs, the behaviour of proposed person (and members of their household) and any local connection between the person and the local area; • have regard to the housing authority's current homelessness strategy and tenancy strategy; • be transparent – a person who applies for housing is entitled to sufficient information to enable them to assess how their application is likely to be treated and how long it will take. 		
<p>Changes to local housing authorities' duty to the homeless</p> <p>Regulations expected 16 July 2012</p>	<p>The Act allows local housing authorities to meet their duty to the unintentionally homeless by offering suitable accommodation in the private rental sector as long as the tenancy is fixed for at least 12 months.</p> <p>The local housing authority is not subject to a duty to the unintentionally homeless if:</p> <ul style="list-style-type: none"> • the applicant refuses an offer of housing that the local housing authority considers suitable – the applicant must be informed of the possible consequences of refusal (and (acceptance) and their right to ask the local housing authority to review the suitability of the accommodation; • the offer of accommodation is not a private rental sector offer; • the housing authority notifies the applicant that they no longer think they are subject to the duty. <p>If an applicant becomes unintentionally homeless and re-applies for accommodation within two years of accepting an offer of accommodation in the private rental sector the local housing authority still has a duty to provide accommodation regardless of whether the applicant has a 'priority need'.</p>		Director of Regeneration & Planning

<p>New requirement for local housing authorities to publish tenancy strategies</p> <p>Tenancy strategies may be required from April 2013</p>	<p>The Act introduces a new duty for every local housing authority to write and publish a tenancy strategy within a year of the measures coming into force (Local Government Lawyer estimate the strategies will need to be in place by April 2013). Local housing authorities must have regard to this strategy when exercising their housing management functions. They are also required to keep the strategy under review and they may modify or replace it from time to time.</p> <p>Tenancy strategies should:</p> <ul style="list-style-type: none"> • set out the matters registered providers of social housing should consider when setting policies on the type of tenancies they will grant, how they will decide which type of tenancy to grant, the length of tenancies and when they will grant a further tenancy before the end of an existing tenancy; • summarise those policies of registered providers of social housing and explain where they can be found; • be regularly reviewed and updated when necessary; • be available for inspection (free of charge) by members of the public. <p>When preparing its tenancy strategy a local housing authority must have regard to its current scheme for allocating social housing (see above) and its current homelessness strategy.</p> <p>Before adopting a tenancy strategy or changing it to reflect a major policy change, the local housing authority must:</p> <ul style="list-style-type: none"> • consult with every private registered provider of social housing in the area. 	<p>The five Tees Valley authorities are seeking to establish a framework for a sub regional Strategic Tenancy Policy. Cabinet considered a report on 19 March that sought approval for this framework. The Cabinet report states that the Council are required to have the Strategic Tenancy Policy in place by January 2013, and not April 2013 as originally indicated.</p>	<p>Director of Regeneration & Planning</p>
<p>Introduction of flexible social housing tenancies and changes to social housing tenancies</p> <p>In force from 1 April 2012, regulations</p>	<p>The Act gives local housing authorities power to offer 'flexible tenancies' to new social tenants and family intervention tenants (tenants with neither assured or secured tenancies who are being provided intensive support in purpose built units). This only applies to new tenancies.</p> <p>A 'flexible tenancy' is a secured tenancy with a fixed term of two years or more. A new tenancy can become a flexible tenancy when:</p> <ul style="list-style-type: none"> • the landlord serves a notice on a tenant that their family intervention tenancy will become a secure tenancy of more than two years; • a 'demoted tenancy' (a less secure type of tenancy because of the tenant's antisocial behaviour) becomes a secure tenancy of more than two years; 	<p>The Tees Valley Common Allocations Policy is undertaking a review to take account of the range of measures contained in the Localism Act 2011 that make changes to the way people access social housing.</p> <p>The draft Tees Valley</p>	<p>Corporate Management Team</p>

published 1 April 2012	<ul style="list-style-type: none"> the landlord offers a flexible tenancy at the end of an introductory tenancy (this only applies if the landlord has informed the tenant of this in writing before the start of the introductory tenancy). <p>The Act outlines the process social housing landlords should use to offer and end flexible tenancies:</p> <ul style="list-style-type: none"> the landlord is required to serve a notice on the tenant and the tenant has the right to ask the landlord to review the decision to offer or end a flexible tenancy; the tenant must ask for a review within 21 days of receiving the landlord's notice - the tenant can also ask the landlord to review the length of the tenancy, but only if the proposed length contravenes the landlord's policy on the length of flexible tenancies. <p>The Act gives the Secretary of State power to make regulations about the procedure to be followed when a tenant asks for a review of the landlord's decision. Tenants will also have the right to end a flexible tenancy by giving the landlord a month's notice in writing.</p> <p>The Act also makes a number of changes to social housing tenancies:</p> <ul style="list-style-type: none"> flexible tenancies and assured tenancies that are granted by private registered providers in England will no longer need to be executed by deed or registered with the land registry; existing secure tenants and assured tenants that exchange their properties with social tenants with flexible tenancies will be able to retain the same level of security of tenure; landlords can only refuse to let tenants exchange properties on grounds specified in Schedule 14 of the Act – these include unpaid rent and accommodation being too large for one of the tenants exchanging properties; only spouses or civil partners that occupy the accommodation as their main home at the time of the tenant's death will have the right to inherit a secure tenancy – this only applies to new tenancies after the measures in the Act come into force; landlords can try to recover possession of a property six to twelve months 	Tenancy Strategy is currently being consulted on with registered providers, partners and stakeholders.	
------------------------	--	--	--

	<p>after they become aware of the previous tenant's death rather than from the actual date of the tenant's death – this only applies if the person who succeeded the previous tenant is not their spouse or civil partners, the property is too large for that person and the landlord proposes to move them to a smaller property;</p> <ul style="list-style-type: none"> • a court cannot make an order for possession of a property let by a private registered social housing provider with a fixed term of two years unless the landlord has written to the tenant giving them six months notice that s/he does not intend to grant another tenancy; • tenants of private registered social housing providers with assured shorthold tenancies will have the right to acquire their property subject to regulations from the Secretary of State – this only applies to new assured shorthold tenancies after the measures in the Act come into force; • landlords have 'repairing obligations' for flexible and assured tenancies with a fixed term of seven years or more. 		
<p>Abolition of the Housing Revenue Account subsidy and introduction of a self-financing system</p> <p>Powers for the Secretary of State to make regulations in force now, self-financing in place from 1 April 2012.</p>	<p>The Act abolished the Housing Revenue Account (HRA) subsidy in England (a system of annual subsidies controlled by Whitehall). It gave the Secretary of State power to introduce a new local self-financing system for council housing which started in April 2012.</p> <p>Under the new system councils will be able to keep all of their rental income and use it to support their own housing stock. The Act gives the Secretary of State power to:</p> <ul style="list-style-type: none"> • calculate the value of each local housing authority's housing service (according to a formula which includes income, expenditure and debts from carrying out its housing functions) and use this to decide the 'settlement payment' (the payment the government will receive or make); • direct local housing authorities to make a payment to the government - this should be treated as capital expenditure; • make a payment from the government to some local housing authorities - this should be treated as a capital receipt that can only be spent on housing; • re-calculate the settlement payment if circumstances have changed – this 	No impact on Council services.	Chief Finance Officer

	<p>may mean the government has to make a payment to the local housing authority or vice versa;</p> <ul style="list-style-type: none"> • direct when and how local housing authorities should make payments to the government and set the rate of interest that will be charged by the government on any money that is not paid on time; • set a maximum amount of debt that can be held by each local housing authority; • make agreements with local authorities which mean they do not have to give the government a percentage of the money they earn from the sale of council houses purchased by council tenants using the right to buy. <p>The Secretary of State can use these powers differently for different areas, different local housing authorities or different types of local housing authority. The Secretary of State is required to consult with any representatives of local government or relevant professional bodies before directing local housing authorities to make a payment to the government or receive a payment from the government.</p> <p>Local housing authorities have a legal duty to give the Secretary of State any information that is requested to exercise the powers listed above: if they fail to provide information the Secretary of State can exercise his powers on the basis of any estimates or assumptions he considers appropriate.</p> <p>The final five determinations as published by the Secretary of State in February 2012 are:</p> <ul style="list-style-type: none"> • The Settlement Payments Determination. This sets out the amount each local authority will either pay the Government or receive from the Government on 28 March 2012 in order to exit the current subsidy system, and the way in which the payments will be made. • The Limit on Indebtedness Determination. This places a cap on the amount of housing debt each council may hold. • The Housing Revenue Account Subsidy Amendment Determination for the year 2011-12. This adjusts the subsidy entitlement for this financial year in order to take account of the interest costs or savings arising from the 		
--	---	--	--

	<p>settlement payments. These payments will be made before the end of the financial year.</p> <ul style="list-style-type: none"> • The Item 8 Credit and Debt Amendment Determination for the year 2011-12. This enables the appropriate charges to be made between the Housing Revenue Account and a council's General Fund to reflect the borrowing costs or savings in this financial year arising from the settlement payments. • The Item 8 Credit and debit Determinations for 2012 onwards. This provides a framework for the Housing Revenue Account ring-fence to continue to operate under self-financing. 		
<p>Power for the regulator and Secretary of State to set standards for registered providers of social housing to help tenants exchange properties and purchase properties</p> <p>In force from 15 January 2012, regulations in force from 1 April 2012.</p>	<p>The Act gives the social housing regulator power to set standards for registered providers which require them to comply with rules about methods of helping tenants exchange properties. It also allows the Secretary of State to direct the regulator on methods of helping tenants exchange properties.</p> <p>The Act allows tenants who own shares in their landlord's organisation (i.e. in a registered private provider of social housing) to benefit from payments which can help them move out of their socially rented property and purchase a property or acquire a long-leasehold interest (over 21-years) in a dwelling.</p>	No impact on Council services.	Director of Regeneration & Planning
<p>Changes to the regulation of social housing</p> <p>In force from 1</p>	<p>The Act abolishes the Tenant Services Authority (TSA) as the regulator for social housing in England and transfers its functions to a new Regulation Committee of the Homes and Communities Agency. The TSA is consulting on changes to the current regulation framework.</p>	No impact on Council services.	Corporate Management Team

April 2012	<p>The new Regulation Committee will have two fundamental objectives which must be achieved with minimum interference:</p> <ul style="list-style-type: none"> • economic regulation to ensure value for money, the financial viability and proper management of providers of social housing and to guard against the misuse of public money; • consumer regulation to make sure social housing is well managed and of appropriate quality, tenants are involved in management issues and are given an appropriate degree of choice and protection. <p>Any action taken by the Regulation Committee must be exercised in way that minimises interference and is proportionate, consistent, transparent and accountable. The Regulation Committee can only use its monitoring and enforcement powers if:</p> <ul style="list-style-type: none"> • it has reasonable grounds to believe that there has been a failure which has resulted in serious harm to the registered provider's tenants or potential tenants; • there is a significant risk that if no action is taken the failure will result in serious harm to the registered provider's tenants or potential tenants. <p>The Act gives the regulator powers to set standards for registered providers which require them to comply with specified rules about the minimum and maximum levels of rent then can charge and the extent to which they can increase or decrease rent.</p> <p>The Act also changes the process for dealing with complaints from social housing tenants by:</p> <ul style="list-style-type: none"> • making sure all complaints are referred to the Ombudsman by an MP, local councillor or designated tenant panel (unless 8 weeks have elapsed since the end of the landlord's complaint process or the designated person declines to refer the complaint or agrees it can be made direct by the tenant); • introducing a unified service for investigating complaints about social landlords – all complaints from social housing tenants will be considered by the Independent Housing Ombudsman (currently complaints from tenants of local housing authorities are made to the Local Government 		
------------	---	--	--

	Ombudsman and complaints from tenants of private providers are made to the Independent Housing Ombudsman.).		
Abolition of home information packs In force from 15 January 2012.	The Act abolishes the legal duty to provide a home information pack.	No impact on Council services.	N/A
Changes to tenancy deposit schemes for social landlords In force from 6 th April 2012.	The Act changes the law on tenancy deposit schemes for social landlords by: <ul style="list-style-type: none"> • extending the time limits within which a landlord must comply with the requirement to protect a deposit for an assured shorthold tenancy by placing it in a tenancy deposit scheme and provide information to the tenant from 14 to 30 days; • making it clear that penalties for non-compliance will apply when the landlord has not complied with these timescales; • making it clear that penalties for non-compliance will also apply when the tenancy has ended; • giving the courts discretion about the level of penalty that may apply; • clarifying that landlords are allowed to seek possession of a property when the deposit is not held in a tenancy deposit scheme or the time limits have not be complied with as long as action has been taken to remedy the situation. 	No impact on Council services.	Director of Regeneration & Planning

4. ELEMENTS OF THE ACT THAT CABINET WILL NEED TO CONSIDER IN THE NEAR FUTURE

4.1 Over the next few months Cabinet will be asked to consider a number of reports and make a range of decisions relating to the implementation of various elements of the Localism Act including:

- Community Right to Challenge;
- Community Right to Bid for Assets of Community Value;
- Community Infrastructure Levy – Cabinet will need to consider the viability testing when this is completed by the appointed external consultants;
- Neighbourhood Planning;
- Local Housing Authorities Duty to the Homeless;
- Tenancy Strategy – this will be covered by the Sub Regional Strategic Tenancy Policy.

5. RECOMMENDATIONS

5.1 Cabinet is note the current position with regards to the implementation of the Localism Act 2011.

6. REASONS FOR RECOMMENDATIONS

6.1 The report provides information on the implementation of the Localism Act 2011 so that Cabinet are aware of the current picture.

7. APPENDICES AVAILABLE ON REQUEST, IN THE MEMBERS LIBRARY AND ON-LINE

N/A

8. BACKGROUND PAPERS

N/A

9. CONTACT OFFICER

Andrew Atkin
Assistant Chief Executive
Hartlepool Borough Council

Tel: (01429) 523003
Email: Andrew.Atkin@hartlepool.gov.uk

FINANCE AND CORPORATE SERVICES PORTFOLIO

Report To Portfolio Holder
17th April 2013



Report of: Assistant Director (Resources)

Subject: Delegated Property Transactions

1. TYPE OF DECISION/APPLICABLE CATEGORY

1.1 Non-Key Decision.

2. PURPOSE OF REPORT

2.1 To inform the Portfolio Holder of the recent Minor Property Issues dealt with under Delegated Powers.

3. BACKGROUND

3.1 At the Portfolio Holder meeting in June 2012 approval was given for decisions on Minor Property Issues to be delegated to the Director of Regeneration and Neighbourhoods.

3.2 It was also agreed that the Portfolio Holder would receive briefings on such issues and that they would be formally recorded in a Portfolio Holder Report.

4. CONSIDERATIONS

4.1 Recently a number of issues as set out in **Confidential Appendix A** **This item contains exempt information under Schedule 12A Local Government Act 1972 (as amended by the Local Government (Access to Information) (Variation) Order 2006) namely paragraph 3, information relating to the financial or business affairs of any particular person (including the authority holding that information).** attached have been dealt with under Delegated Powers including:

- The sale of a number of garage bases

- The granting of grazing licenses.

4.2 These issues have been discussed with the Portfolio Holder in a briefing session.

5. RISK IMPLICATIONS

5.1 The agreements in place minimise any risks to the Council.

6. FINANCIAL CONSIDERATIONS

6.1 The Council will achieve income from these agreements as well as reducing management time incurred with these properties.

7. LEGAL CONSIDERATIONS

7.1 Legal agreements in place will safeguard the Council's interests.

8. EQUALITY AND DIVERSITY CONSIDERATIONS

8.1 There are no equality or diversity implications.

9. SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS

9.1 There are no implications under Section 17.

10. STAFF CONSIDERATIONS

10.1 There are no staff implications.

11. ASSET MANAGEMENT

11.1 The attention of the portfolio Holder is drawn to the Asset Management element of the Medium Term Financial Strategy (MTFS). The decision by Cabinet in January 2009 requires a commercial, proactive approach to be taken on Asset Management issues, the proceeds of this transaction being a contribution to the Medium Term Financial Strategy (MTFS).

11.2 The decision to adopt a commercial approach to asset management requires the Council to realise the full value of any properties or property rights that it disposes of.

12. RECOMMENDATIONS

- 12.1 Portfolio Holder notes the report and the property issue dealt with under Delegated Powers.

13. REASONS FOR RECOMMENDATIONS

- 13.1 To confirm property issues dealt with under Delegated Powers and use of part of the capital receipt.

14. BACKGROUND PAPERS

- 14.1 There are no background papers.

15. CONTACT OFFICER

Graham Frankland
Assistant Director (Resources)
Level 3
Civic Centre
Hartlepool
TS24 8AY

Tel: (01429) 523211
E-mail: graham.frankland@hartlepool.gov.uk