

THE OVERVIEW AND SCRUTINY COMMITTEE

21 January 2013

LOCALISM INFORMAL SCRUTINY GROUP (ISG) - FINAL REPORT

REPORT OF COUNCILLOR ROBERT HUTCHISON (CHAIRMAN OF ISG)

Contact Officer: Antonia Perkins Tel No: 01962 848 314, Email:
aperkins@winchester.gov.uk

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Attached is the final report of the Localism Informal Scrutiny Group (ISG). The objective of the ISG was to examine the implications for Winchester City Council and our communities of the Localism Act, with particular focus on the General Power of Competence and Neighbourhood Planning.

The ISG met on 6 occasions over a period of four months from August to November 2012 during which time it took evidence from a range of external and internal witnesses regarding the opportunity that the new General Power of Competence could bring to the City Council and eligible parish councils, as well as the potential of Neighbourhood Planning for local communities.

From the evidence gathered at these meetings, the ISG agreed to make recommendations to The Overview and Scrutiny Committee for referral to Cabinet on actions for the future. The main recommendations are set out below for The Overview and Scrutiny Committee for their consideration for recommendation in turn to Cabinet to endorse and action.

RECOMMENDATIONS:

That The Overview and Scrutiny Committee recommend to Cabinet the following:

1. That any future staff re-structuring should consider re-designating existing posts, or creating new posts, to encourage a more entrepreneurial approach.
2. The City Council should investigate what support parish councils might need to achieve or maintain Quality Parish Council status and, within the constraints of

current resources, create a relevant support package. This support should be enshrined within a Localism Partnership Agreement between WCC and HALC within which WCC support for the Quality Parish Scheme, the MDC (Member Development Charter) and CiLCA (the Certificate in Local Council Administration) is expressed.

3. The City Council accept the Hampshire Association of Local Councils' offer to brief officers and Members on the competence framework for the parish sector, to include the Quality Parish Scheme, the MDC and the CiLCA.
4. The City Council should institute a systematic annual programme of training for community leaders, officers, councillors and others to provide them with a good understanding of what can be achieved through good community planning, and how places can be improved at all levels.
5. That the Overview and Scrutiny Committee review progress against any agreed actions in 12 months time.

OTHER CONSIDERATIONS:

1. SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS
(RELEVANCE TO):

The General Power of Competence has potential significance for how the Council's Change Plans can be delivered, rather than the content of the Change Plans, supporting the Council's move towards acting more entrepreneurially and creatively when delivering services in the most efficient way possible. Neighbourhood Planning is an important part of the statutory planning framework which will help deliver the Community Strategy.

2. RESOURCE IMPLICATIONS:

If Cabinet agree the recommendations contained in this report, further work will be needed to review what support the City Council can provide parish councils, including in their pursuit of Quality Parish Status, to ensure it complements that of the Hampshire Association of Local Councils and that there is no overlap.

The remaining recommendations can be met through existing staff resources.

3. RISK MANAGEMENT ISSUES

There are no immediate risks associated with this report and its recommendations.

BACKGROUND DOCUMENTS:

Files held in the Democratic Services Division.

APPENDICES:

1. Final report of the Localism ISG

REFERENCES:

None

Localism ISG

Final report – Cllr Robert Hutchison

1 Comment from the Chair

The Localism Act seeks to give effect to the Government's ambitions to decentralise power away from Whitehall and back into the hands of local councils, communities and individuals allowing them to act on local priorities. Though widely misunderstood, the Localism Act touches a nerve; most people care about the place where they live. The challenge for local authorities is to release local interest and energy to effect positive changes, large and small, from planting trees to sensitive development of new housing. Unless people understand the powers that they have, and are supported to achieve change, the opportunities created by the Localism Act will be missed.

Cllr Robert Hutchison
Chair

1 Introduction

1.1 The Localism Act covers a broad range of measures designed to achieve the Government's goals around shifting control to the lowest possible level, with five areas that are particularly relevant to local government and this ISG: community rights, planning reform, housing, general power of competence and empowering communities. The Department of Communities and Local Government has produced a useful Plain English Guide to the Localism Act which summarises the key points in the Act. This guide can be found at:
<http://www.communities.gov.uk/publications/localgovernment/localismplainenglishupdate>

1.2 In order to focus the work of the Group and to ensure the time was best spent, Members concentrated on two areas from the Localism Act which could potentially have the most impact on the Council and its communities. The following terms of reference were agreed:

'That the ISG examine the implications for Winchester City Council and our communities of the Localism Act, with particular focus on the General Power of Competence and Neighbourhood Planning'

1.3 The ISG met at 6 times over four months from August to November during which it considered the following:

Meeting	Topic	Witnesses
1	Briefing on current position and the adoption of scope	
2	General Power of Competence	Stephen Whetnall, Corporate Director (Governance) Bill Lynds, Planning and Projects Barrister
3	Neighbourhood Planning – the Denmead front runner project	Cllr Rob Humby Jenny Nell, Principal Planning Officer Neil Lander-Brinkley - Chairman of Denmead Parish Council Kevin Andreoli - Vice Chairman of Denmead Parish Council George Hollingbery - MP
4	Neighbourhood Planning – looking to the future	Steven Lugg - The Hampshire Association of Local Councils Patrick Davies - The City of Winchester Trust Richard Baker - The City of Winchester Trust
5	The Localism Act and innovative working	Alexis Garlick – Head of Finance Kevin Warren – Head of Estates
6	Discussion and conclusions	Simon Eden – Chief Executive

The ISG would like to thank the witnesses for their input into the review, as well as the Hampshire Association of Local Councils for the guidance note on the General Power of Competence on which this report draws.

Recommendations:

- To achieve the full potential of the Localism Act, the Council will require a significant change to its attitude to risk and opportunity, away from the current risk averse approach fostered by earlier rules and regulations. We recommend that any future staff re-structuring should consider re-

designating existing posts, or creating new posts, to encourage a more entrepreneurial approach.

- To help Parish Councils make the most of the Localism Act, the City Council should investigate what support they might need to achieve Quality Parish Council status and, within the constraints of current resources, create a relevant support package. This support should be enshrined within a Localism Partnership Agreement between WCC and HALC within which WCC support for the Quality Parish Scheme, the MDC (Member Development Charter) and CiLCA (the Certificate in Local Council Administration) is expressed.
- The City Council accept the Hampshire Association of Local Councils' offer to brief officers and Members on the competence framework for the parish sector, to include the Quality Parish Scheme, the MDC and the CiLCA.
- As part of its community leadership role the City Council should institute a systematic annual programme of training for community leaders, officers, councillors and others to provide them with a good understanding of what can be achieved through good community planning, and how places can be improved at all levels.
- That the Overview and Scrutiny Committee review progress against any agreed actions in 12 months time.

2 General Power of Competence

2.1 The General Power of Competence (GPC) is intended to provide local authorities – and parish councils that have achieved the status of Quality Parish Council – with the same capacity to act as an individual. This power offers the opportunity for councils to work in new ways without the same concerns over acting ultra vires (beyond their legal powers). However, the power is still subject to some restrictions on its use. The government's own impact assessment has emphasised that the intention is to allow authorities to:

- Act in their own financial interest to generate efficiencies and secure value for money outcomes and to raise money by charging for discretionary services and trade in line with existing powers.
- Engage in activities, previously ruled as outside the well-being power, such as providing certain indemnities and guarantees and engaging in speculative activities.

2.2 The intention is that the GPC gives local authorities confidence in their legal capacity to act for their communities. It encourages Councils to use this power to work with others in providing cost-effective services and facilities in innovative ways to meet the needs of local people. A local authority can lend or invest money; it can trade; it can even sell energy to the National Grid.

2.3 Limitations of the General Power of Competence

2.4 Although the GPC potentially provides the Council with an opportunity to act more entrepreneurially (to raise income for example), there are several restrictions around using the GPC of which the Council should be aware:

- If a council is already subject to a statutory duty, then that duty remains in place.
- There are also many existing procedural and financial duties that remain in place for regulating the governance of a local council.
- Furthermore, the authority must comply with employment law, Health and Safety legislation, equality legislation and duties related to data protection and freedom of information for example.
- If another authority has a statutory duty, then it remains their duty to provide that service (e.g. education).
- If the action the council wishes to take is also covered by a specific power then any restrictions that apply to the overlapping power are still in force.

2.5 Winchester City Council and the GPC

2.6 In discussion with the ISG, The City Council's Corporate Director (Governance), Stephen Whetnall said that the GPC had greater potential to be utilised by larger unitary council projects. For example, Adult Services could establish new care facilities using company arrangements, which would then be likely to involve tax, VAT and EU procurement rule issues as well as risk matters not normally associated with local authorities. Smaller districts would not normally have the internal capacity to deal with these matters and might not wish to instigate projects of such comparative size. Also, due to the difficulty and complexity of defining exactly 'what an individual may normally do', it will be necessary to involve the Council's Legal department at a very early stage when contemplating a new entrepreneurial approach to avoid the threat of subsequent litigation.

2.7 The ISG heard that the City Council continued to carry out innovative work utilising existing legislation. The Wellbeing Powers of the 2000 Local Government Act had been used to justify the 'topping up of work that was the responsibility of another authority', which, for example, included some of its strategic partnership and traffic management work. In some instances it could be used to justify economic development work or some grants to voluntary bodies. The City Council also already pursues opportunities to make efficiencies by working in partnership with

neighbouring authorities, for example through its shared service programme in IT.

- 2.8 The ISG understands the spirit of the Localism Act as encouraging a more entrepreneurial approach to services and possible developments; such an approach could be effected by, among others, Parish or Town Councils, groups of citizens or neighbourhood groups, the voluntary sector or the City Council itself. The ISG appreciates that the City Council, as a matter of course, already takes many initiatives to improve services while saving public money. It acknowledges that the Council is seeking to upgrade and make best use of its assets, and realises what has been done in this respect in the case of Hyde Abbey, Abbey Mill and the Bar End depot. It is also mindful that a local authority should have a mixed portfolio of investment and capital projects, with careful risk and 'opportunity cost' assessments carried out in advance of each such investment.
- 2.9 Conclusion and recommendation on Winchester City Council and the General Power of Competence**
- 2.10 One of the aims of the Localism Act is to encourage local authorities to think differently about how they finance and deliver services to the public. There is a drive for authorities to look for inspiration from the private and voluntary sectors, and to act more creatively and entrepreneurially in generating new income streams to support the good work that already happens in communities throughout the country in hard economic times.
- 2.11 Evidence given to the ISG indicates that a lack of powers prior to the Localism Act has not necessarily hindered the City Council in working creatively. However, in order to embrace further opportunities to generate income and to explore delivering services differently and better, the City Council's natural tendency towards caution when assessing risks should be challenged. To make the most of the steer being given from Government via the Localism Act, a sustained cultural change involving both Members and officers needs to be encouraged.
- 2.12 Without suggesting that the Council should become a major property developer the ISG recognises that there are clear public benefits to the City Council becoming more entrepreneurial as other district councils (Woking and Eastleigh are two nearby examples) have done. In addition to a careful assessment of risk, entrepreneurship often also involves being opportunistic. However – mainly because of severe pressure on staff time – the Council is not optimally equipped to take advantage of opportunities that might arise in making low to moderate risk investments in property, energy and other service areas. The limitations on taking a more entrepreneurial approach appear largely to derive from the size of the Council and the current constraints on local government expenditure.

- 2.13 ***The ISG recommends that to achieve the full potential of the Localism Act, the Council will require a significant change to its attitude to risk and opportunity, away from the current risk averse approach fostered by earlier rules and regulations. We recommend that any future staff re-structuring should consider re-designating existing posts, or creating new posts, to encourage a more entrepreneurial approach.***
- 2.14 **Parish Councils and the GPC**
- 2.15 Parish Councils have a high degree of autonomy and are responsible for their own activities and funds. The ISG received evidence from Steven Lugg of the Hampshire Association of Local Councils. Mr Lugg advised that for a Parish Council to exercise the new powers, assurance should be given to all (including the principal authority) that it was competent and would work within a legal framework. This could be demonstrated by being at least two-thirds elected and by having a qualified clerk in post which would improve their overall credibility - linked to gaining the Parish Council accreditation scheme (Quality Parish status). The principal authority should encourage Parish Councils in their area to work towards achieving this. He reminded the ISG that accredited Parish Councils could deliver more on behalf of the principal authority, at potentially less cost.
- 2.16 Mr Lugg gave an example of the new power being utilised in Upton Gray, in Basingstoke district. The local Parish Council was now providing a grant to a local village shop to ensure that it remained open. This provided a valuable community service to residents, the alternative to which would ultimately cost more. Mr Lugg advised that despite the Parish Council being small, it had met the necessary criteria with regard to its 'eligibility' to exercise the new power.
- 2.17 Mr Lugg drew the Group's attention to actions that the City Council could take and should be taking to increase democracy and help to improve the effectiveness of some Parish Councils. These centred on the City Council's support for the growth of proactive and informed local councils, and capacity building within this sector to create parish councils which can confidently use the GPC and choose the right framework to follow to ensure their wishes for future development are taken into account. Evidence drawn from the experience of HALC is that local councils using current 'quality' frameworks are better than those that do not. Examples include Bishops' Waltham, Denmead, Swanmore, Wickham and Whiteley which have all achieved Quality Parish Council status.
- 2.18 **Recommendation on parish councils and the General Power of Competence**

- 2.19 ***The ISG recommends that to help Parish Councils make the most of the Localism Act, the City Council should investigate what support they might need to achieve Quality Parish Council status and, within the constraints of current resources, create a relevant support package. This support should be enshrined within a Localism Partnership Agreement between WCC and HALC, within which WCC support for the Quality Parish Scheme, the MDC (Member Development Charter) and CiLCA (the Certificate in Local Council Administration) is expressed. It also recommends that the City Council accept the Hampshire Association of Local Councils' offer to brief all officers and Members on the competence framework for the parish sector, to include the Quality Parish Scheme, the MDC and the CiLCA.***

3 Neighbourhood plans

- 3.1 Neighbourhood Plans are just one element of local planning, and should be seen in relation to other possible approaches. Arguably every place – town, village, suburban or urban area – needs its plan. In respect of the provisions of the Localism Act for Neighbourhood Plans, the starting point for the ISG is that the City Council has to use its limited resources wisely to get the best results for current and future residents of Winchester in terms of planning, housing, public realm, economic development, environment and recreation. The Council must work within the parameters of current legislation, while using the flexibilities of that legislation to best advantage.
- 3.2 The Neighbourhood Planning provisions within the Localism Act represent a new way for communities to decide the future of the places where they live and work. A Neighbourhood Plan can establish general planning policies for the development and use of land in a defined neighbourhood area. The ISG heard about the progress being made with the Denmead 'front runner' Neighbourhood Plan. No doubt the City Council, and parish councils, will study further progress, and the eventual outcomes in Denmead, with considerable interest.
- 3.3 Steven Lugg drew members' attention to a Guide produced by the National Association of Local Councils and CPRE England, a copy of which can be found at the link below.
<http://www.cpre.org.uk/resources/housing-and-planning/planning/item/2689-how-to-shape-where-you-live-a-guide-to-neighbourhood-planning>
- 3.4 The ISG recognises that Neighbourhood Plans, as defined in the Localism Act, are detailed, time consuming and complex; they require extensive research and local voluntary involvement as well as a referendum, all of

which makes their chances of success – that is of the benefits outweighing the costs – problematic.

- 3.5 It was confirmed that a Local Planning Authority could currently claim back retrospectively some of its costs associated with its support of the creation of a neighbourhood plan; in total £30k per neighbourhood plan can be reclaimed. This would be made in two payments: £5k following the formal designation of a neighbourhood area and £25k on the successful completion of the examination. However there are windows during which these funds can be applied for - so the opportunities are limited and dependent on how far neighbourhood plans are developed. In order to manage this additional funding DCLG set out three payment periods for 2012/13. As the Council had already initiated the formal designation process for Denmead, we were able to promptly apply for £5,000 under this scheme before the end of the first claim deadline of 7 October. The Council has confirmed with DCLG that the 'on completion of successful examination' payment of £25,000 is due at the point at which the examiner states that the plan can proceed to referendum either with or without further modifications. DCLG will announce during December 2012 how much funding will be made available in the next financial year 2013/14 and arrangements for Local Planning Authorities to apply. There is no certainty that this additional financial will be available in the longer term.
- 3.6 Support for a neighbourhood plan is resource intensive for the City Council and everyone else involved. 0.5 days a week of officer time in Strategic Planning is spent supporting the Denmead neighbourhood plan and dealing with enquiries from other parishes about neighbourhood plans. Some local authorities have needed to appoint a neighbourhood planning officer
- 3.7 The ISG concluded that people and parishes should and will utilize the Localism Act as they see fit. Considerable resources are required to carry through a Neighbourhood Plan and there is a role for Neighbourhood Plans, not least in areas where there is conflict between local people and proposed development.
- 3.8 More generally, however, the aim should be to achieve consensus either through Community Plans or Area Action Plans (commonly used in many urban areas). This can also be done through the other work that the City Council is doing in preparation for Local Plan Part 2, that is the 'Blueprint 2' process, designed to elaborate and place further detail on the initial development strategy set in Local Plan Part 1 for an area by allocating smaller sites for development. There are subtle differences between Local Plan Part 2, Neighbourhood Plans, Community Plans and Area Action Plans. Local Plan Part 2 and Neighbourhood Plans eventually become statutory planning documents and are used to determine planning applications. Area Action Plans can be adopted as Supplementary Planning Documents and so help to determine planning applications,

whereas Community Plans have no statutory status but are invaluable to identify community based projects to bring various partnerships together to deliver.

- 3.9 In the urban area of Winchester, work on Community Plans is starting or is under way in Harestock and Weeke, and separately in Stanmore where the work will be led by an urban design consultancy. Community Plans should not be as costly as Neighbourhood Plans in terms of time taken and the financial outlays involved, including for the principal authority. However Community Plans should be based on developing a vision and analysis for a village, town or urban area, and must involve residents and stakeholders, focussing on opportunities for development as well as public realm improvements and local improvements to community facilities.
- 3.10 In Winchester Town some areas require a more detailed analysis, a proactive and overall approach to opportunities for development, as well as public realm enhancements. These areas – for example the area around Winchester station - are not usually suitable for Community Plans as they are not primarily areas undergoing change for the benefit of existing residents of the area alone; they have a wider significance to residents, visitors, and for economic development. They require a vision and a holistic, proactive approach to the area not just a site and would aim to lead developers rather than expecting developers to produce something that might be acceptable.
- 3.11 The ISG is well aware of the resource constraints at the City Council. It recognises that all worthwhile planning depends for its success on high quality leadership, effective engagement with officers, residents and other stakeholders, and co-operation between different tiers of local government. Neighbourhood Plans need to comply with the Local Plan, and higher level planning guidance set out in the National Planning Policy Framework.
- 3.12 Conclusion and Recommendation on Neighbourhood Planning**
- 3.13 While Parish Councils should be encouraged to take the lead in deciding on the optimal approach to local planning appropriate to their areas, in Winchester Town it should be for the Town Forum to decide on how best to take forward the recently-completed 'Vision for Winchester' and to set the Framework for improvements and developments including approaches to Community and Action Planning in the urban area. The ISG endorses the view of the City of Winchester Trust that the Winchester Town Forum is not a suitable representative body to develop one or more Neighbourhood Plans for the town area due to the size or area which it covers; nevertheless the Town Forum has a clear responsibility for helping to set the Framework and parameters for future planning initiatives in the area which it represents.

- 3.14 It is a central part of the role of the City Council to promote high quality place-making and encourage more community engagement partly as an antidote to the prevailing cynicism and sense of disillusion about politics, local and national. The issues surrounding the new planning regime are complicated. ***The ISG recommends that as part of its community leadership role the City Council should institute a systematic annual programme of training for community leaders, officers, councillors and others to provide them with a good understanding of what can be achieved through good community planning, and how places can be improved at all levels.*** This should be a thoroughly practical programme of training on community planning and effective place-based improvements, engage local people as fully as possible, and draw on the skills of local architects and other relevant professionals.