

MUNICIPAL YEAR 2013/2014 REPORT NO. **135A**

MEETING TITLE AND DATE:

Members & Democratic
Services Group – 12
November 2013
Council – 27 November
2013

REPORT OF:

Director of Finance
Resources & Customer
Services
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Agenda – Part: 1	Item: 12
Subject: Constitution Changes: Local Authorities (Functions & Responsibilities) Order 2000 – Establishment of companies	
Cabinet & Other Members consulted: n/a	

1. EXECUTIVE SUMMARY

- 1.1 At the last Council meeting (9 October 13) members were asked to consider an additional change to the Council's Constitution relating to the way decisions regarding the establishing of companies and trusts and acquisition of share capital are agreed.
- 1.2 The proposed change was to remove the granting of approval to establish a company, or trust or acquire share capital as a matter reserved for Council and, on the basis of legal advice, to include it as an Executive decision under the Cabinet remit. Council felt that further consideration of the proposed change was needed in advance of any final decision being made, as it had only been possible to undertake limited consultation with members in advance of the Council meeting. It was therefore agreed that the matter should be referred back to the Members & Democratic Services Group for detailed consideration prior to any final recommendation being made to Council.
- 1.3 The proposed change, along with the legal advice on which it has been based, has been set out in the report for members consideration. Having considered the additional information provided Members & Democratic Services Group (12 November 2013) agreed to recommend the proposed change on to Council for approval.

2. RECOMMENDATIONS

Council is asked to approve (as recommended by the Members & Democratic Services Group) the removal of approval for the establishment of any companies or trusts and acquisition of share capital as a matter in the Constitution reserved for Council and its addition, in accordance with the Local Authorities (Functions & Responsibilities) Order, as an Executive decision under the remit for Cabinet.

3. BACKGROUND

3.1 Local Authorities (Functions & Responsibilities) Order 2000: Establishment of Companies

3.3.1 The Local Government Act (LGA) 2000 provided for three categories of council decision:

- a. Most fall under the Executive; exercised by the Leader and Cabinet, and often delegated to officers.
- b. Decisions which are specifically reserved to Council e.g. setting the Council tax and Council also has responsibility for the sort of regulatory decisions dealing for example with licensing and development control usually delegated by Council to Committees; and
- c. There is a relatively small category of "Local Choice" decisions, where the Council has discretion over whether a decision is one for the Executive or the Council.

Legal advice has confirmed that under the terms of the Local Authorities (Functions & Responsibilities) Order which accompanied the LGA 2000, the fall-back position is always that unless a matter is specifically reserved to the Council, it is a matter for Executive decision.

3.3.2 The list of matters currently identified as being a function reserved for Council (Chapter 2.3 – para 4.3 (20) of the Constitution) includes the following – “to establish any companies or trusts or acquire share capital in companies other than on behalf of the Pension Fund Investment Panel”. This has been a matter listed for Council within the Constitution for a number of years.

3.3.3 The legal advice received was from an external source (Bevan Brittan) and was raised as an additional comment to an unrelated issue on which an opinion had been sought. The advice received was that as the establishment of companies and trusts and the acquisition of share capital is not a function specifically listed as a matter reserved for Council under the Local Authorities (Functions & Responsibilities) Order, it should be treated as an Executive rather than Council function, with the decision making power resting with Cabinet rather than full Council.

3.3.4 In order to comply with this legal advice, Council (9 October 13) was asked to consider and approve the establishment of companies and trusts being removed as a matter reserved to Council and included under the remit for Cabinet. At the Council meeting concerns were highlighted in relation to the limited consultation undertaken with

members in advance of the meeting, with further detail requested on any potential decisions planned that the change would impact upon.

3.3.5 At the current time, the Assistant Directors of Corporate Governance & Legal are aware of the following projects for which approval will need to be sought, as part of their delivery mechanisms, to the establishment of a company:

- (a) Establishment of a Community Interest Company with Capel Manor College for a social enterprise vegetable box scheme as one of the milestones in the Market Garden Initiative grant agreement with the GLA.
- (b) Creation of a Local Authority Trading Company to purchase and own a small number (up to 15) of 2 & 3 bed housing units under a pilot project, that would be rented/leased back to the Council in order to assist in addressing housing demand and mitigating the costs of Temporary Accommodation. The pilot will also help to establish the Council's capability in managing this type of housing model in the future.

The proposed pilot approach would be consistent with the investment models identified within the report due to be considered by Cabinet (13 November 13) setting out a Framework of Housing Investment Options (KD 3808).

3.3.6 Under the recommended change being sought the decisions on the creation of these companies would be matters presented to Cabinet for approval, and as such would be open to the usual call-in requirements.

4. ALTERNATIVE OPTIONS CONSIDERED

No other options have been considered. The recommended change to the decision making process for the creation of companies and trusts and acquisition of share capital by the Council has been designed to reflect legal advice received in relation to application of the Local Authorities (Functions & Responsibilities) Order 2000.

5. REASONS FOR RECOMMENDATIONS

To reflect legal advice received in relation to application of the Local Authorities (Functions & Responsibilities) Order 2000.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

None – the changes required to the Constitution will be met from within existing resources.

6.2 Legal Implications

The recommendation within the report has been designed to reflect, within the Council's Constitution, external legal advice relating to application of the Local Authorities (Functions & Responsibilities) Order 2000 and to ensure that the Council decision making arrangements continue to meet these requirements.

7. KEY RISKS

The changes recommended to the way in decisions are taken within the Constitution relating to the establishment of companies, trust and acquisition of share capital has been designed to reflect legal advice and will ensure that the Council continues to act within the requirements of the Local Authorities (Functions & Responsibilities) Order 2000. Not complying with these Regulations could open the decision making process up to potential future challenge.

8. IMPACT ON COUNCIL PRIORITIES

Fairness for All & Strong Communities

The proposed change has been designed to ensure that transparency and openness in relation to the Council's decision making arrangements is maintained.

9. EQUALITIES IMPACT IMPLICATIONS

It has not been necessary to carry out an Equalities Impact Assessment in relation to this proposal.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The proposed change has been designed to assist the Council in managing its business in as efficient and effective a way as possible.

11. PUBLIC HEALTH IMPLICATIONS

There are no specific public health implications arising from the proposals within this report.

Background Papers

None