

# REPORT TO CABINET

**REPORT OF:** CORPORATE HEAD OF PARTNERSHIPS AND IMPROVEMENT

**REPORT NO:** POI37

**DATE:** 11 May 2009

<b>TITLE:</b>	<b>SUSTAINABLE COMMUNITIES ACT 2007: FIRST INVITATION TO LOCAL AUTHORITIES TO SUBMIT PROPOSALS</b>	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	NA	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Cllr Ray Auger Access and Engagement Portfolio Holder	
<b>CONTACT OFFICER:</b>	<b>Robert Moreland, Corporate Head Partnerships and Improvement, 01476 406069, <a href="mailto:r.moreland@southkesteven.gov.uk">r.moreland@southkesteven.gov.uk</a></b>	
<b>INITIAL IMPACT ASSESSMENT:</b>	Carried out and Referred to in paragraph (7) below:	Full impact assessment Required:
<b>Equality and Diversity</b>		
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the Local Democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	Reports to Communities PDG November 2008 and Engagement PDG 26 February 2009	

## 1. RECOMMENDATIONS

It is recommended that the Cabinet:

- a) agree that the Council should seek to use the Sustainable Communities Act 2007
- b) agree to consult with tenants on the proposal to keep all the rent collected on council properties locally and for it to be spent on improving council housing, reducing those houses environmental impact and investing in new affordable housing
- c) consider the outcome of this consultation prior to submitting a final proposal to the government by 31 July.

## **2. PURPOSE OF THE REPORT/DECISION REQUIRED**

The Sustainable Communities Act 2007 allows councils to make proposals to the government which they consider would “contribute to promoting the sustainability of local communities”. The definition of sustainability is deliberately wide and can include largely anything that would encourage the improvement of the economic, social or environmental well being of a local area.

The Cabinet invited Policy Development Groups (PDGs) to consider ideas that might be suitable for consultation with local people and ultimately submitted to government. This report presents the outcomes of these discussions and recommends that the cabinet agree to consult more widely on the proposal to keep 100% of the council housing rent collected within South Kesteven.

## **3. DETAILS OF REPORT**

The Act was originally introduced as a private members’ bill from the Conservative MP Nick Hurd and secured cross party support to get through Parliament in October 2007.

The Secretary of State for Communities and Local Government has consulted on the procedure councils need to follow if they wish to submit proposals and has now formally invited councils to submit proposals by 31 July 2009.

Proposals to be submitted need to require some kind of national action by the government to be implemented; they shouldn’t be something councils have the power to do already. Proposals can involve the transfer of functions from government and central government agencies to local councils along with the relevant budgets.

Proposals are required to be first submitted to the Local Government Association (LGA) who will put together a ‘short –list’ for consideration by the Secretary of State. The Secretary of State will then decide which proposals from the short list should be implemented. The LGA have put together a question and answer sheet which is attached.

Before making any proposal the council will need to set up or recognise one or more panels of representatives of local people and work with them to try to reach agreement about which proposals (if any) it wants to put forward. The guidance states that “representatives of local persons” means a balanced section of the individuals, or organisations the council considers likely to be affected by, or have an interest in the proposal.

Proposals will be considered by an LGA panel with representatives from all four political groups. They will assess whether:

- The proposal needs the act for it to be implemented;
- The act's requirements have been met in terms of involving all sections of the community;
- The proposal contributes to the aim of a more sustainable community, by encouraging economic, social or environmental wellbeing.

The Policy Development Groups (PDGs) have discussed this new legislation and examined a number of potential proposals including the retention of council home rents, retaining and spending locally business rates and extending planning powers to retain local community facilities. The PDGs unanimously supported the idea of retaining council home rents locally and it is suggested that the council explore this proposal further in consultation with tenants. If this is submitted to the Government in July and successful the council could then examine further ideas in future years.

Retaining council home rents locally is an issue that the council has been campaigning on for some time. The Council currently suffers a negative impact on its Housing Revenue Account (HRA) with some £5.8m rental income being returned to central government in the last year. While the government have carried out a review of the housing subsidy system no proposals for changing the current arrangement have been proposed to date. This situation has contributed to the council's housing revenue account being in deficit with HRA reserves having to be used to keep it in balance. If the council were able to keep all of the rent paid by its tenants the HRA could be balanced more speedily and the surplus could be used to invest in improving the stock, increasing their energy efficiency and investing in new affordable housing. If this power were extended to other local authorities it would also enhance the potential of the proposed project to develop new social housing with the other Lincolnshire councils with their own social housing.

The council has a panel of housing tenants made up of representatives from the different estates and neighbourhoods (which are due to meet on 1<sup>st</sup> June) and a wider consultation panel of around 100 tenants who can be consulted about this proposal.

### **What new powers might be successful?**

It is too early to know what might be successful though the national pressure group 'Local Works' is encouraging the public to lobby their councils to commit to using the Sustainable Communities legislation. So far around 80 councils have committed to do so.

#### **4. OTHER OPTIONS CONSIDERED**

The Council has the flexibility to decide not to use the Sustainable Communities Act and it could wait to see what happens from the first round later this year. Given that any new powers awarded to applying councils may (if successful) in the long term be granted to all councils this would be a cost effective way of dealing with this legislation. However, while this may be cost-effective it would not involve the council in any type of consultation or engagement with its local communities and would not guarantee that the powers granted would solve the particular issues of communities in South Kesteven.

The Sustainable Communities Act is a new piece of legislation designed to enable local communities and their local councils have an influential role in sustaining their local economies and reversing the decline in local community infrastructure. The Act places a legal obligation on councils to work with local communities to decide what new powers would help them solve particular problems. It also places a new legal obligation for central government to reach agreement (rather than just consult) with councils on the changes it is prepared to make in response to proposals submitted by councils.

#### **5. RESOURCE IMPLICATIONS**

The recommendation to consult on the proposal regarding the housing revenue account can be met within the current resources of the council. Clearly if the council were successful in retaining all of its council home rents then further work would need to be done to develop how this funding would be used and to revise the Housing Revenue Account in future years.

#### **6. RISK AND MITIGATION (INCLUDING HEALTH AND SAFETY AND DATA QUALITY)**

None at this stage.

#### **7. ISSUES ARISING FROM EQUALITY IMPACT ASSESSMENT**

Given the broad definition of 'sustainability' in the Act it is likely that proposals made by councils may impact on equalities and diversity. The nature of any impact will be able to be measured when specific proposals are developed and if the council decides to submit any of them to the government.

#### **8. CRIME AND DISORDER IMPLICATIONS**

None

## **9. COMMENTS OF SECTION 151 OFFICER**

The Council approved budget does not include any financial consequences of proposals arising from the Sustainable Communities Act. Clearly if any proposals were adopted then the financial implications of these would need to be modelled and incorporated into future budget presentations to Council.

## **10. COMMENTS OF MONITORING OFFICER**

The recommendation to Cabinet is for it to consider use of new powers under the Act and if it decides to use the powers to consider the recommendations from the PDG's relating to the housing revenue account. Any proposal should be submitted under the Act on the basis of public consultation. That consultation has not yet been carried out. Cabinet should consider the results of consultation before any submissions are made.

## **11. COMMENTS OF OTHER RELEVANT SERVICE MANAGER**

## **12. APPENDICES:**

### **Questions and answers about the Sustainable Communities Act 2007**

#### **What does the Sustainable Communities Act aim to do?**

It encourages local communities to come forward with ideas and proposals to promote the sustainability of their local area. 'Sustainability' is defined in the Act in very broad terms, and can cover anything which could improve the economic, social, or environmental well-being of the area, or promote participation in civic or political activity.

#### **Who can put forward proposals?**

Ultimately anyone can suggest a proposal, via their council. The expectation is that most proposals will come from community organisations, local branches of national organisations, parish and town councils, neighbourhood forums, residents and tenants associations, local strategic partnerships and other partnership bodies. Proposals can be developed by councils themselves, who will need to discuss these ideas with local panels (explained later) and try to reach agreement. Ideas could be generated through the development of sustainable community strategies and local area agreements.

#### **Does the Act bring any more Government funds to local areas?**

No, there is no specific budget to distribute under the Act. Although proposals could be made to government which would require new funding, generally proposals under the Act will need to be resourced from existing public funds.

### **How do I make a proposal under the Act?**

Contact your council. All proposals under the Act will need to be submitted via local councils, who have discussed them with local panels. Councils will then decide which to send on to a national 'Selector' body, whose role is to consider proposals made under the Act and in co-operation with the Secretary of State, to draw up a short-list. The Local Government Association is taking on the appointed role as 'Selector' as required under section 3(1) of the Act. A final shortlist of proposals will go to the Secretary of State for Communities and Local Government who will consult with the Selector and try to reach agreement on which of the proposals on the shortlist should be implemented.

### **Are district councils as well as county councils involved?**

Yes. All councils in England, other than town and parish councils, can submit proposals to the Selector. Parish and town councils will need to submit proposals via one of the principal councils in their area. They could also be represented on community panels.

### **Why has the Local Government Association been chosen as Selector?**

The Act requires the Secretary of State to appoint a Selector 'who represents the interests of local authorities'. The Local Government Association, formed in 1997, is a membership body representing county and district councils, unitary authorities and London Boroughs, along with fire, police, national park, and transport authorities. It is therefore well placed to carry out the Selector role. The intention to appoint the LGA as Selector was made clear when Parliament was considering the Bill.

### **Who has the final say on which proposals are put into effect?**

The Secretary of State decides, but in doing this the Act requires her/him to co-operate with the Selector (the Local Government Association) 'and try to reach agreement' on proposals. The Secretary of State also has to publish reasons for decisions, to publish an action plan on how proposals will be implemented, and report to Parliament each year on progress being made under the Act.

### **When can I submit a proposal?**

The first invitation to make proposals must be issued by the Secretary of State (currently Hazel Blears) by 23 October 2008. There will then be at least a six month period for the development of proposals locally and submission to the Selector, allowing for the requirement for community engagement. Further information on the process to be followed will be published alongside the invitation.

**Are there any specific criteria for proposals under the Act?**

A basic criterion is that proposals must be ones that need some form of action from central government (such as a change in legislation, a transfer of responsibilities from one public body to another, a new national policy or a change or strengthening of policy). In considering proposals, local councils will need to distinguish between those which could happen anyway, if agreed at local level, and those which need central government action or intervention of some sort. The latter category covers those appropriate to be submitted onwards, firstly to the LGA as Selector and potentially to the Secretary of State. The LGA will be developing some further criteria, to give some guidance on what sort of proposals have greatest chance of success. These criteria are likely to remain broad-brush, to avoid excluding good ideas, large or small.

**Is there any Government guidance on how the Act will work?**

Yes, there has been recent consultation on draft statutory guidance. The final version has been published as an annex to wider guidance, titled *Creating Strong and Prosperous Communities*, and is available from the [CLG website](#).

**Does the Act require each local authority to get involved?**

No. Local authorities are not under a legal duty to participate, and could choose not to promote the Act locally and to ignore any proposals coming forward from residents or businesses. But councilors could then face pressure and lobbying from groups and organisations interested in making proposals, and would need to explain to the public why they were unwilling to make use of the Act. It is expected that the majority of councils will choose to take part. Councils can engage with its provisions in the first round of proposals or in subsequent rounds – although the timing of these has not yet been fixed.

**Is there a formal process for councils to 'opt in' to the Act?**

No, there is no such requirement or process. Councils can choose whether or not to engage locally in discussions about proposals, and then later whether or not to submit any to the Selector.

**Where did the Act come from?**

It started life as a Private Members Bill, promoted by a coalition of organisations interested in local sustainability. The Bill was sponsored in Parliament by Nick Hurd MP and gained wide cross-party support. The Communities and Local Government Department (CLG) is supporting implementation of the Act, as part of the wider agenda on 'place-shaping' and community empowerment and issued a [Guide to the Act](#) in February this year.

## **How will a local council go about considering proposals under the Act?**

Before submitting any proposals to the LGA as the national Selector, each council will need to go through several steps: establish or identify a panel (or panels) of local people and work with them to develop proposals which would promote sustainability. This might be a newly established panel, or an existing local consultative panel or forum which meets the requirements of the Act. Try and reach agreement with the panel, about the merits of a proposal and priorities between different proposals. Consult with those parties affected if the proposal involves the transfer of a responsibility from one public body to another. 'have regard' to a list of matters set out in a Schedule to the Act, and which reflect issues of concern to organisations which supported the Act during its passage through Parliament (such as preserving local jobs, services and facilities, energy conservation, sustainable transport and food production). make a formal decision (via the full council or council cabinet) on whether to forward the proposal onwards to the Selector.

## **How will such panels be made up? Who sits on them?**

The arrangements for local panels are set out in the Act, and in CLG Guidance and Regulations. However, the legislation and guidance are not prescriptive about panels, only requiring that they must be made up of 'representatives of local persons'. This is defined as 'a balanced selection of the individuals, groups or organisations the authority considers likely to be affected by, or have an interest in the proposal'. The guidance also suggests that local authorities may want to involve parish councils in their panels. In this context, the term 'representative' does not refer to formally elected or nominated members of the community such as councillors or officeholders in community organisations (although such individuals are not excluded from taking part in panels).

## **Who decides whether a panel meets the Act's requirements?**

It is left to local councils to use their judgement as to whether an existing panel or a new panel would be required to meet the legal requirements of the Act. Councils need to ensure adequate representation from often under-represented groups (defined in Guidance as 'those groups of local persons who in the opinion of the local authority are under-represented in civic and political activity in the authority's area'). Councils can decide whether to have one panel, or to establish several panels on a geographic or thematic basis. They may use existing consultative panels or forums set up for another reason (such as development of the area's sustainable community strategy, or established neighbourhood/area forums, youth councils, and so on) so as to avoid extra costs and duplication. In such circumstances, councils will need to ensure that existing panels properly meet all the requirements of the Sustainable Communities Act.



**What is the significance of the Schedule to the Act, listing matters 'to which local authorities must have regard'?**

This schedule contains a list of matters, as decided by Parliament, which local councils will need to think about when considering and deciding on proposals. The list is intended to help councils decide whether proposals will contribute to the sustainability and wellbeing of the area. The list illustrates

the type of issues with which proposals might be concerned, but the Schedule should not dictate or constrain the scope of proposals, if local people and the councils have other ideas which will contribute to a more sustainable community.

**Is there a limit on the number of proposals that a council can put forward to the national Selector?**

No, the Act sets no limits on the number of proposals that can be made. Depending on the level of interest and number of proposals received, the LGA will need to take a view on how many to short-list for discussion with the Secretary of State.

**Are there any limitations on proposals for 'transfer of functions'?**

No. The Act states that 'a proposal may include the request for a transfer of functions from one person to another'. The CLG guide to the Act interprets this as the transfer from one public body to another. Potentially the Act allows for proposals that involve significant shifts in responsibilities across the public sector, including Government and regional agencies and quangos (Non Departmental Public Bodies) as well as local service providers. Such proposals would need to demonstrate why they would improve economic, social or environmental wellbeing in the locality from where the proposal is made. The agency concerned must be consulted about this proposal, but is not required to support it.

**If a function transfers, does the budget go with it?**

Where a successful case is made for the transfer of responsibilities from one public body to one or more others, relevant budgets would transfer across at the same time. The Local Spending Reports (explained below) are intended to provide information to support this process. As in all such cases, there would be issues to be resolved about adequacy of budgets, and the extent to which they were secure for the longer-term.

**Can a function be transferred from the private sector to the public sector?**

Nothing in the Act prevents such proposals being made, but the Act does not create any new means of over-riding private law rights or contractual agreements. There will be inevitable complications over what are seen as 'public' services provided by bodies not in public sector (such as transport operators, housing associations and Registered Social Landlords).

### **The Act involves 'Local Spending Reports'. What are these?**

An important part of the Act is a new requirement on the Government to ensure the publication of information about public expenditure in different areas and localities across England. The aim is to give people a better picture of how public money is currently spent, and encourage ideas for spending

it more effectively, and in ways which contribute better to sustainability. At the moment there is little easily accessible information available on the geographic distribution of all public expenditure, at anything lower than a regional level.

### **What will Local Spending Reports include?**

The government will be issuing a discussion paper in autumn 2008 on the scope and format of spending reports. Issues to be decided include the geographic level for such reports (for example whether information will match local authority boundaries at district level, as well as county level), and the expenditure categories to be used.

### **When will the first Local Spending Reports become available?**

The Act requires arrangements to be in place by April 2009. CLG have stated in the past that they hope for earlier publication.

### **How will the Selector role work?**

This is still being discussed between the Local Government Association and CLG and more details will be published in October 2008. The initial thinking is: There will be an initial deadline for proposals, allowing several months following the October 2008 first invitation for ideas to be worked up and discussed at local level. There is likely to be an option (not a requirement) to submit an initial expression of interest: short summaries from councils who want to float an idea to see if it gathers support, or is also being considered by others. A simple format for proposals to be submitted to the Selector will be available. The LGA hopes to publish (via the Selector website) brief details of proposals as they come in. This should help ensure the system is open and transparent and will allow people to build on ideas coming from different parts of the country.

### **Who will be doing the 'selecting', 'within the Local Government Association?**

The LGA is a membership organisation, made up of local councils in England (almost all councils are members). It works as a cross-party organisation, via a series of boards made up of councillors from different local authorities. The political balance across these boards reflects the state of the political

parties within local councils across England, at any point in time. Agendas and decisions of LGA boards are published on the LGA website: [LGA decision-making bodies](#) Decisions on which proposals to short-list will be made by a new LGA Selector body, set up specifically for the purpose. It

will be made up of councillors, drawn from across the political parties represented on the LGA.

### **How will proposals be assessed?**

Depending on the nature of the proposal the assessment will need to cover questions such as. Does the proposal require action from central government, or is it something that a local council or (other local partner body) could do anyway? How will it contribute to environmental, economic and/or social sustainability, (including participation in civic and political activity)? What will be the impact of the proposal, in terms of geographic area or population affected. Is it of very local significance or potential sub-regional impact? The LGA is likely to short-list smallscale as well as larger ideas, in keeping with the devolutionary intent of the Act. What legal issues might be involved? Do any local bodies (council, police, health, others)

already have the necessary powers? If there are proposals for transfer of functions, what other bodies are affected? Have they been consulted? Have the Act's requirements for engagement with a community panel been met, and what evidence is there of local support for the proposal? Have the various matters in the Schedule to the Act been taken into account, where relevant to an individual proposal?

### **Who pays for the costs of implementing the Act?**

The Act states that Parliament will meet the costs. Negotiations between the LGA and CLG on meeting the costs of the Selector role have yet to be concluded, and the LGA will want to ensure that costs of the selection process are fully reimbursed by Government and do not fall on councils and council-tax payers.