

Bolsover District Council

Executive

15th January 2018

Disabled Facilities Grants – Executive Function and Delegation to Officers

Report of Councillor Brian Murray-Carr, Portfolio Holder for Community Safety & Street Services

This report is public

Purpose of the Report

- To ask Members to consider the proposal to revise the list of Executive Functions in the Constitution, to include decisions in respect of Disabled Facilities Grants, and to amend the terms of reference for Licensing Committee.

1 Report Details

- 1.1 It is a long-standing practice at the Council that all applications for Disabled Facilities Grants (“DFGs”) are approved by Licensing Committee. The majority of these are applications for mandatory grants, which the Council has no legal basis to refuse.
- 1.2 Opinion across local government, both legal and procedural, has crystallised behind the view that DFGs must be considered an Executive function. There are no grounds to treat such grants as a function to be exercised by Council or, in the case of Bolsover, by a committee of Council.
- 1.3 Accordingly it is appropriate that the Council updates the Constitution to recognise that the approval of all DFGs is an Executive function, not the responsibility of Licensing Committee. This is a legal requirement and to leave the responsibility for DFGs within the terms of reference for Licensing would lead to potentially unlawful decisions.
- 1.4 It is therefore proposed that item 4 in the Licensing Committee terms of reference relating to grants pursuant to the Housing Acts be removed.
- 1.5 A corresponding provision will need adding to the Executive Functions in Section 3.4 of the Constitution. The following wording is proposed for clarification:

“All functions pursuant to the Housing Grants, Construction and Regeneration Act 1996, the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 and related legislation.”

- 1.6 It is then proposed that a specific delegation of that power is made to the Joint Assistant Director – Planning & Environmental Health to determine all applications for mandatory DFGs. The named officer may alter following the SAMT restructure. Applications for discretionary grants, which are extremely rare, will remain a matter for Executive to determine.
- 1.7 The proposed amendments to the Constitution would be submitted to Council for approval, subject to comments made by the Executive, Licensing Committee and Standards Committee, which is responsible for the Constitution Review.

2 Conclusions and Reasons for Recommendation

- 2.1 The changes set out will enable the Council to fulfil its obligation to ensure decision making takes place properly and lawfully.

3 Consultation and Equality Impact

- 3.1 This proposal will be reported to Licensing Committee, and will be further considered by Standards Committee, prior to the recommendations being considered for approval at Council.

4 Alternative Options and Reasons for Rejection

- 4.1 The function could remain with Licensing Committee but this would be potentially unlawful and leave decisions open to challenge.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 There is a potential financial risk to the authority of costs associated with legal challenges to the current framework if left unchanged.

5.2 Legal Implications including Data Protection

- 5.2.1 Decisions made under the current framework are potentially open to legal challenge as they will have been made without the proper lawful authority.

5.3 Human Resources Implications

- 5.3.1 None.

6 Recommendations

- 6.1 That Members consider the report and support the recommendation to Council that the Constitution is amended to:
- (i) Remove item 4 from the Licensing Committee terms of reference; and
 - (ii) Add to the Executive Functions in Section 3.4 the following item:

“All functions pursuant to the Housing Grants, Construction and Regeneration Act 1996, the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 and related legislation.”; and

- (iii) That a paragraph is inserted into the Scheme of Delegation to Officers granting the Joint Assistant Director – Planning & Environmental Health authority to determine mandatory Disabled Facilities Grants applications.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>District Wards Affected</p>	All
<p>Links to Corporate Plan priorities or Policy Framework</p>	All

8 Document Information

Appendix No	Title
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
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