

**FINANCE COMMITTEE CALL FOR EVIDENCE  
COMMUNITY EMPOWERMENT (SCOTLAND) BILL;  
FINANCIAL MEMORANDUM SUBMISSION FROM  
EAST LoTHIAN COUNCIL**

**Consultation**

***Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?***

1. East Lothian Council responded to two separate Scottish Government consultation exercises preceding the Bill: in September 2012 and in January 2014. The Council commented in general terms on several aspects of the financial assumptions made.

***If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?***

2. We do not consider that the FM accurately reflects our comments on the costs of local authority support for community bodies in building their capacity to enable them to participate fully in some of the activities envisaged in the Bill.

***Did you have sufficient time to contribute to the consultation exercise?***

3. On these 2 occasions, yes.

***If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.***

4. We would like to suggest the following additions:

- 4.1. **With reference to**  
**Part 3 Participation requests;**  
**Part 4 Community right to buy land; and**  
**Part 5 Asset Transfer Requests:**

**Supporting communities**

4.1.1. We mentioned above the cost of local authority support to local community bodies to help build their capacity.

4.1.2 East Lothian Council area is for the most part not densely populated, and different areas will be likely to have their own different community groups. In addition, we have 20 community councils and 23 tenants and residents associations, all very active and committed.

4.1.3 As a relatively small council with small numbers of staff, we foresee challenges in meeting the needs of new community groups and assisting existing groups to develop the capacity to take on the new opportunities and challenges represented by the Bill.

4.1.4 If collectively we are to take the opportunity this Bill represents and use it to best effect, we need to have adequate resources to build community capacity, with

appropriate consideration being given to this issue nationally and across the board rather than assuming that local authorities will be able to find the resources from current spending allocations.

## **Part 5 Asset transfer requests**

4.1.5 The Council has some experience of asset transfer.

### **4.1.6 *There will be added work for our Estates and Property service:***

- Responding to ownership enquiries from community bodies and individuals.
- Provision of detailed property information to community groups on request.
- Processing asset transfer requests including liaison with relevant departments, preparation of option appraisals and reports, in house capital and rental valuations and the acquisition of District Valuer valuations where appropriate.
- Reviewing applications and recommendations where an appeal is made against a refusal to the request.
- Provision of plans and information where an asset transfer is to proceed by sale or lease.

4.1.7 It is anticipated that a full time post at a cost of circa £40,000 per annum, shared between Estates and Property, will be required to undertake work relating to Asset Transfer Requests and to extra work occasioned by Part 6 Common Good Property. In addition, potential District Valuer valuation fees are estimated at £5,000 per annum.

### **4.1.8 *There will be additional work for our legal team:***

- preparing the documents required;
- explaining and negotiating with the community groups;
- matters can be further complicated due to most of the community groups not have access to legal advice: the council's in-house legal advisers cannot advise third parties but we need to make sure that the groups understand the documents that they are entering into.

4.1.9 Depending on the nature of the assets and the complexities involved, per transaction it can take between 20 – 60 hours or more of a senior solicitor's time over the course of 2 to 3 months. This would mean a possible cost per transaction of between £400 and £1200 or more in council solicitors' time alone.

4.1.10 Officers have commented that it would make things easier and save time if a clear policy is set out of what is acceptable or not when a request for an asset transfer is made. Part 5 of the bill section 55(3) outlines what the authority must take into account when considering an asset transfer request. A policy would need to refer to this section and make it clear on what grounds a refusal is made as there is a right to appeal the decision.

4.1.11 The consideration of a request and the right of appeal would increase the burden on officers' time as we would anticipate an influx of requests once the bill is passed.

4.1.12 The Bill puts the onus on local authorities to have their own review process – perhaps similar to the tenancy, education, social work etc sub-committee process. This will require council resources and officer time: if we estimated 4 reviews per year, each taking 7 hours of officer time to support, this could equate to around £500 in a year.

4.1.13 There is also the possibility that this will overall cost the council additional time and money due to:

- 1) increase in officers' time dealing with requests;
- 2) not making the anticipated savings from Non Domestic Rates;
- 3) potentially retaining the risk of maintenance and lifecycle costs for the asset;
- 4) ongoing costs in supporting the community groups in managing the asset and
- 5) the risk that the asset will return to the authority, where no savings were made in the transfer.

### **Best value**

4.1.14 It is important to be mindful of the duty on local authorities to secure Best Value in their activities. The asset base of the Council is continuously reviewed to ensure that the Council is maximising the use of its assets. For any property identified as surplus, we suggest the options available should be looked at within the wider delivery of Best Value. We need to be mindful of the current economic climate and the desirability of encouraging economic growth.

4.1.15 It may not necessarily be in the best interests of the community as a whole to transfer a surplus building to a community group on request. The community as a whole may be better-served by attracting an economic use of such a building. In other words, there might be both economic and community wellbeing justification in seeking interest from the market to see if we could attract an economic use which would increase footfall and employment in the local area.

4.1.16 We are also concerned about possible uses which may involve one community group seeking sole use of a building but only using it for a few hours per week, or different community groups looking for conflicting uses of a building, which could be divisive and cost time and money to resolve.

4.1.17 We also need to be mindful of the commercial rents, and that community proposals to operate a building do not put further pressure on third-sector grants for the Council. Councils would have to institute policies which require a sound business case, showing a sustainable future for the asset under proposed community-body control.

## **4.2 With reference to Part 6 Common good property:**

4.2.1 In East Lothian we consider that the Common Good assets are relatively stable, and the volume of extra work will depend on public demand. While we already hold a record of assets (including Common Good assets), there will be added work for our Estates and Property service:

- Preparation of a separate register for property held on the Common Good and maintaining the register.
- Investigating claims that a property or land should or should not be considered part of the common good.
- Preparation of or input to consultation documents for community councils where the Council proposes to sell or change the use of land or property held on the Common Good.

### **4.3 With reference to Part 8 Non-domestic rates:**

#### **Business Rates**

4.3.1 Part 8 of the bill gives a local authority the power to introduce local reduction and remission schemes in respect of Business Rates with effect from the financial year 2015/2016. There seems to be no prescription in what may qualify for relief as the bill allows for reduction/remission to be applied to: categories, areas, activities and any other matters. It seems clear that these reductions will not be underwritten by the Scottish Government, consequently any relief will in effect be funded through savings identified in the Council's other activities, which would carry an opportunity cost for the Council. One way or another, business rates reduction and remission will essentially be funded by East Lothian's Council Tax payers.

#### **Impact on Business Rates Administration in East Lothian**

4.3.2 Should the bill become law there will, in all likelihood, be a marked increase in interest and applications for relief, some of which may be unsuccessful. Given the wide ranging nature of the scheme we would anticipate that many applicants/potential applicants would contact the Rates Team to dispute entitlement and subsequently seek support and advice from their elected representative. This would inevitably have an impact on the workload of the Business Rates Team.

4.3.3 The amount that businesses currently pay for their rates is determined mainly by Rateable Value and entitlement to fairly prescriptive reliefs. There is, therefore, limited discussion or negotiation with ratepayers in respect to their financial liability. Once ratepayers discover that there is the possibility of reduction or remission in their rates, we envisage that there will be a sizeable increase in volume and complexity of calls/emails. This additional work could be absorbed by the Rates Team but at the expense of other successful activities such as visits and intensive contact with poor payers. Changing priorities in this way will impact on our ability to collect money. This may be reflected in a reduction in collection rate.

4.3.4 To facilitate an orderly administration of relief available under the scheme it would be essential to include any provisions within our Discretionary Rates Relief policy thereby ensuring that decisions are made in a consistent manner, robust enough to withstand appeal.

4.3.5 The decision in regard to potential recipients of relief under the scheme would depend on our priorities. Some local authorities in England, as a result of similar legislation, (The Localism Act 2011) use Rates relief as a means to attract new business to the area and to encourage economic growth by awarding relief to new businesses for a limited period (Leeds City Council). In the longer term this policy

may eventually financially benefit the Council but would, in the short term, be costly in a time of monetary constraint as we would be funding any reduction. It appears that some English authorities had no specific policy and judged every application on its merits. There is evidence that many of these are now creating fairly restrictive policies, possibly to stem the flow of applications and appeals.

4.3.6 However with no decisions made yet as to the scope of any reductions we would offer it would be impossible to quantify the full cost of awarding any relief.

***Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?***

5. Some lack detail (which is understandable given the nature of the provisions); however, costs will still be incurred and we need collectively to understand how these costs will be met.

***If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?***

6. Local government will incur extra cost as a result of these provisions (which constitute a new legislative burden) and it is not possible to allocate money to these costs from within our budgets without taking it from other activities. We would expect central Government to add to our settlement any money necessary to fulfil the provisions of the Bill.

***Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?***

7. We have no further comment to add in addition to those set out above.

***Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?***

8. We have no further comment to add in addition to those set out above.