
Meeting: Executive
Date: 10 January 2012
Subject: Delegation of Powers to Provide and Operate the Markets in Dunstable and Leighton Buzzard
Report of: Cllr Maurice Jones, Deputy Leader and Executive Member for Corporate Resources
Summary: The report proposes to delegate powers for the operation of the markets in Dunstable and Leighton Buzzard to the respective Town Councils.

Advising Officer: Richard Carr, Chief Executive
Contact Officer: Peter Fraser, Head of Partnerships and Community Engagement
Mark Woolsey, Managing Solicitor Litigation, Regulation, Environment, Housing, Contracts and Employment

Public/Exempt: Public

Wards Affected: Dunstable Watling; Dunstable Northfields; Dunstable Manshead, Dunstable Ickniel, Dunstable Central; Leighton Buzzard North; Leighton Buzzard South; Leighton Linslade

Function of: Executive

Key Decision No

Reason for urgency/ exemption from call-in (if appropriate) N/A

CORPORATE IMPLICATIONS

Council Priorities:

The delegation of functions for the management of Markets to the respective Town Councils, will ensure that markets within those areas continue to be provided. It is considered that the delegation of powers to a local level will allow decisions to be taken on the provision and operation of markets that will aid Central Bedfordshire Council's priority to manage growth effectively.

Financial:

1. The financial implications for the Council are considered to be both positive and negative.

2. As a positive, the Council will be relinquishing the requirement for it to provide any management to the markets in Dunstable or Leighton Buzzard, thereby not expending any money on this function. Equally positive is the Council's negotiation with each Town Council that has led to an agreement to ring fence a proportion of money to be put towards the delivery of business growth and support activity related to the Central Bedfordshire Economic Development Plan.
3. On the negative side, the Council currently allows for its markets to be operated by Wendy Fair Markets Limited and in return for this permission the Council receives an annual remuneration. The contract is coming to an end on 31 May 2012 and the annual remuneration will end upon its expiry. It is open to this Council to retender the contract, if desired, and to continue to receive an income. However, the delegation of powers to the Town Council will result in the annual remuneration no longer being received.

Legal:

4. The provision of the power to operate the markets to the relevant Town Council is by virtue of the delegation from powers provided under the market charter and legislative provisions.

Risk Management:

6. It is not considered that there are any issues to highlight at this time.

Staffing (including Trades Unions):

7. TUPE may apply to the ongoing undertaking. The issues of TUPE will need to be considered and dealt with by the relevant Town Council.

Equalities/Human Rights:

8. The undertaking will continue in the same location within the same parameters as currently operated. On this basis it is not considered that there will be any equalities/human rights issues.
9. Furthermore, the fact that the power to operate the markets is being transferred to another public body provides some comfort that any issues of equalities or human rights would be carefully considered.

Community Safety:

10. Not Applicable.

Sustainability:

11. Not Applicable.

Procurement:

12. Not applicable. The Council is not seeking another contractor to operate the service, it is delegating powers to the Town Council for it to provide and operate a market.

Overview and Scrutiny:

13. This matter has not been considered by Overview and Scrutiny.

RECOMMENDATIONS:

The Executive is asked to:

- 1. From the 1 June 2012, for the period of five years until 1 June 2017, delegate the powers to provide and operate a market, by virtue of the Food Act 1984 and the Animal Act 1981 and the powers devolved from the market charter, in respect of the operation of Dunstable Market, to Dunstable Town Council. Such delegation is made to operate the market in accordance with the specification and business plan as approved/to be approved by the Head of Partnerships and Community Engagement.**
- 2. From the 1 June 2012, for the period of six years until 1 June 2018, delegate the powers to provide and operate a market, by virtue of the Food Act 1984 and the Animal Act 1981 and the powers devolved from the market charter, in respect of the operation of Leighton Buzzard Market, to Leighton Linslade Town Council. Such delegation is made to operate the market in accordance with the specification and business plan as approved/to be approved by the Head of Partnerships and Community Engagement.**
- 3. Delegate to the Deputy Chief Executive and Director of Children's Services, as Lead Officer for Localism and Community Engagement, in consultation with the Deputy Leader and Executive Member for Corporate Resources the power to further deal with all and any issues that arise in relation to the provision and operation of Markets within Central Bedfordshire. Including, but not limited to, the ability to delegate and end the delegation of powers.**

<i>Reason for Recommendations:</i>	<i>To ensure that the powers to operate the markets can be delegated to the relevant Town Council to allow for the provision of the markets to continue into the future.</i>
------------------------------------	--

Executive Summary

1. Central Bedfordshire Council is seeking to allow markets within its area to be operated and controlled by the Town Council of the relevant area. This practice takes place in the former Mid Bedfordshire area of Central Bedfordshire and it is considered that this practice should be extended to cover the entire area.
2. On this basis, it is proposed that the power to operate the markets at Dunstable and Leighton Buzzard be delegated to the Town Councils of Dunstable and Leighton Linslade.

Introduction

1. Within the area of Central Bedfordshire the practice of who has the power to operate markets is not consistent.

2. In the north of the area (the former Mid Bedfordshire District) the market rights and charters have been given to the respective Town Councils, for the Town Councils to provide and operate markets in their areas.
3. In the south of the area (the former South Bedfordshire District) the markets, specifically Dunstable and Leighton Buzzard, are operated by virtue of a contract awarded to Wendy Fair Markets Limited ('Wendy Fair').
4. Over recent months discussions have taken place with a view to determining the immediate and mid term provision of markets and the body who should have the power to operate them.

Powers to Operate Markets and Fairs

5. There are three ways in which powers to provide and operate markets are obtained by Local Authorities. These are:
 - (a) Acquisition by Charter;
 - (b) Acquisition by Prescription or Usage; and
 - (c) Acquisition by Statute.
6. The provision and operation of a market by virtue of a charter is the provision and operation of a market under an instrument by which the Crown granted those powers. Both of the markets at Dunstable and Leighton Buzzard are markets provided by virtue of powers awarded under charter.
7. To acquire the right to provide and operate markets by prescription requires evidence of a market in existence, uninterrupted, for in excess of 20 years. This provision is not considered further in this report as it is not believed that there are any markets in Dunstable or Leighton Linlade that operate under these provisions.
8. Markets and Fairs are all regulated by the provisions of the Markets and Fairs Clauses Acts 1847. These provisions are not considered in this report but are flagged up to show that all markets are defined and regulated in a certain way, and are important to ensure unauthorised markets can be prevented.
9. Central Bedfordshire Council has the power to provide and operate markets by virtue of the Food Act 1984 and the Animal Health Act 1981. Both statutory provisions are of limited value where there is a market already operating in the area to which the new market is desired.
10. A power to provide and operate a market can also be conferred by local enactments. It is not considered that there are any local enactments which provide this power and therefore the report does not concern itself with this issue again.

Wendy Fair Markets Limited ('Wendy Fair')

11. Following a procurement exercise and the successful tender being awarded, the markets at Dunstable and Leighton Buzzard are operated on behalf of the Council by Wendy Fair. The contract with Wendy Fair requires a specified sum to be paid to the Council by Wendy Fair, regardless of the performance of the markets.
12. The contract with Wendy Fair is reaching its natural end and will expire on the 31 May 2012. At the current time there is no proposal to re-tender the contract for the operation of the markets and it is, therefore, expected that the contract will expire at its end date.
13. The end date of the contract is considered to be the appropriate time from which to begin any new methods by which to provide and operate the markets in the Central Bedfordshire area.

Discussions with Town Councils

14. As part of the Council's proposals to devolve powers, discussions have taken place with the Town Councils for the areas of Dunstable and Leighton Linslade.
15. Each of the Town Councils are keen to assume the responsibility for the provision and operation of markets within its area and the discussions have resulted in a proposal for each of the Town Councils to take over the responsibility for the operation of the markets in their areas.

Ring Fencing of Money for Central Bedfordshire Economic Development Plan

16. Each of the Town Councils has submitted, or is in the process of submitting, a business plan, which is to be scrutinised and approved by the Head of Partnerships and Community Engagement in consultation with the Lead Member for Localism. In addition, the Council has drafted a specification to outline the standards it expects from the operation of the markets by the Town Councils (Appendix A).
17. As part of the negotiations each Town Council has specified that it will ring fence a proportion of money to be put towards the delivery of business growth and support activity related to the Central Bedfordshire Economic Development Plan. The actual amounts are set out in the respective specifications.
18. It is considered appropriate that any delegation of powers would be subject to compliance with both the business plans and the specification.

Delegation of Powers

19. Section 101 of the Local Government Act 1972, provides that a local authority can authorise the discharge of any of its functions by way of committee, sub-committee, officer of that authority or by delegation to any other local authority.

20. For the avoidance of doubt s101 states, as far as relevant:

“101 Arrangements for discharge of functions by local authorities.

(1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions:

(a) by a committee, a sub-committee or an officer of the authority; or

(b) by any other local authority.

(1A) A local authority may not under subsection (1)(b) above arrange for the discharge of any of their functions by another local authority if, or to the extent that, that function is also a function of the other local authority and is the responsibility of the other authority’s executive.

(1B) Arrangements made under subsection (1)(b) above by a local authority (“the first authority”) with respect to the discharge of any of their functions shall cease to have effect with respect to that function if, or to the extent that:

(a) the first authority are operating or begin to operate executive arrangements, and that function becomes the responsibility of the executive of that authority; or

(b) the authority with whom the arrangements are made (“the second authority”) are operating or begin to operate executive arrangements, that function is also a function of the second authority and that function becomes the responsibility of the second authority’s executive.”

21. There would be no requirement for Central Bedfordshire Council to undertake a tender exercise, as the function is being provided via another local authority on its behalf.
22. The Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply and the relevant Town Council will need to be aware of the requirements that will be placed onto them to safeguard the employment of any workers who transfer to the new undertaking.
23. Without the delegation Central Bedfordshire Council will be forced to retender the contracts and consider how each market is to be provided and operated.

Conclusion and Next Steps

24. The Executive is asked to consider the delegation of the powers to operate a market to the respective Town Councils of Dunstable and Leighton Linlade for their areas.
25. The Executive is asked to delegate these powers from the expiry of the contract with Wendy Fair to ensure the continuation of the provision of markets in Dunstable and Leighton Buzzard.

26. The Executive is also asked to delegate the power to provide and operate markets, and to deal with all associated matters, to the Deputy Chief Executive and Director of Children's Services, to ensure future provision and conduct is maintained.

Appendices:

Appendix A – Specification for the Operation of the Markets at Dunstable and Leighton Buzzard.

Background Papers: (open to public inspection)