

Meeting Executive
Portfolio Area Environment and Climate Change
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EXTENSION OF CONTRACT - HERTFORDSHIRE BUILDING CONTROL AND APPROVAL OF DELEGATED BUILDING CONTROL POWERS

KEY DECISION

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1 PURPOSE

To seek Executive approval to confirm the delegation of certain Building Control approval powers from SBC to other shareholder local authorities in the Hertfordshire Building Control (HBC) partnership. To extend the current Services Agreement with Hertfordshire Building Control and to delegate approval of a revised contract in the months ahead.

2 RECOMMENDATIONS

- 2.1 To confirm, so far as is permitted by law, the functions carried out by the Council's Building Control team, which are not transferred to Hertfordshire Building Control (HBC), may be provided by one or more of the Member Authorities (of HBC) acting under powers contained in Section 101 of the Local Government Act.

- 2.2 To extend the current Services Agreement with Hertfordshire Building Control until 31st March 2023 and delegate authority to the Strategic Director (TP), in consultation with the Leader of the Council, Portfolio Holder for Environment and Climate Change, and statutory officers, to agree future extensions.
- 2.3 To delegate authority to the Strategic Director (TP) to agree any final and outstanding legal, technical, financial and operational matters to be concluded in effecting the proposed extension of contract.
- 2.4 Continue the appointment of Three Rivers District Council to perform the LA1 contract management function and the audit and issue of statutory notices as per the current arrangements.
- 2.5 Appoint East Hertfordshire District Council to perform the statutory notice LA1 function until 31st March 2023.
- 2.6 Delegate authority to the Strategic Director (TP), following consultation with the Leader of the Council and Portfolio Holder for Environment and Climate Change, Monitoring Officer and Strategic Director (CF) to agree and finalise any future arrangements for statutory building control including the LA1 function beyond 31st March 2023.

3 BACKGROUND

- 3.1 Local Authorities (LAs) have a statutory duty to provide a Building Control service. This means that if a Building Regulations application is submitted to the authority, it has a duty to ensure that the proposed works comply with the Building Regulations. Local authorities charge statutory fees for this service and were originally the sole providers of the service. However, in 1997, the government gave powers that allowed private sector Approved Inspectors (AIs) to also act in this capacity (arguably with less onerous procedural requirements).
- 3.2 This competitive environment has meant that it is now more difficult for LAs to retain their market share and fee income which is, increasingly, being lost to AIs. Consequently, many LAs, including the Borough Council, have struggled to ensure that the Building Control service they provide is cost neutral. In order to sustain the service and prevent it becoming disproportionately expensive, new options for service delivery are in place.
- 3.3 In 2013, the Chief Executives of the District Councils in Hertfordshire began to explore the possibility of a wider arrangement across the County and seven Councils, including SBC, showed an interest in progressing this idea. The other six Councils are Welwyn Hatfield, North Hertfordshire, Three Rivers, East Hertfordshire, Hertsmere and Broxbourne. Agreements were concluded in 2015 to combine the building control functions and it went live in 2016.
- 3.4 Dacorum Council joined in 2019 bring the partnership up to 8 of the 10 LAs in Hertfordshire. Through subsidiaries the partnership can and does offer services across the country.
- 3.5 The role of LA1 is to act as the Delegated Authority and to issue certificates through a Contract Manager, audit HBC and monitor service levels. An

annual support sum is paid to LA1 by all the building control authorities. Currently LA1 is designated as Three Rivers Council. HBC performs the administration of the building control applications, site visits, inspections, and assessments then writes the report and recommendations.

3.6 The company has been able to deliver most of the key aspirations as set out in the initial Business Plan, over the first 5 years:

- Providing a resilient Building Control Service.
- Reducing the cost of the Building Control Service.
- Growing market share in Building Control in Hertfordshire.
- Providing profitable growth outside of Hertfordshire.

4 REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS

Extension of Service Agreement with Hertfordshire Building Control Ltd

4.1 Building control services are contracted from the building control authorities to HBC through the Services Agreement which had a term of 5 years from 17th August 2016, with an extended term agreed through to 16 August 2022. It is proposed that a further deed of variation is entered into to extend the Services Agreement until a new longer-term contract is put in place. It is recommended that authority be delegated to the Strategic Director (TP) in consultation with the Leader, Portfolio Holder and statutory officers to agree the new building control arrangements going forward.

Delegation of Building Control duties

- 4.2 Since 2016/2017, Three Rivers District Council (TRDC) has acted as the host local authority for the partner's building control functions that could not be passed on to HDC. Most of these functions are the statutory sign off of building control applications and the associated checks.
- 4.3 Under the current arrangements, all the building control authorities have delegated their statutory building control functions to Three Rivers Council. However, as the current Services Agreement comes to an end, the future of this role is yet to be determined. Three Rivers District Council (TRDC) has offered to continue to deliver the LA1 functions in relation to contract management function and the audit and issue of statutory notices, but has requested that the statutory notices are signed by the authorised officer of the local authority to which the notice relates.
- 4.4 The current agreement with TRDC finishes on the 31st of July 2022, with any new arrangement following that.
- 4.5 Through negotiation with all 8 shareholding local authorities, It is proposed to continue with TRDC hosting the LA1 function, but with an interim sign off host authority, anticipated to be East Hertfordshire District Council. More formal arrangements are being made to have a long-term provision in place by the 1st of April 2023.
- 4.6 The Executive has previously confirmed 'so far as permitted by law, the functions carried out by the Council's Building Control team, which are not

transferred to HBC, may be provided by one or more of the Member Authorities acting under powers contained in Section 101 of the Local Government Act. This report reiterates the delegation of building control powers, previously agreed in 2015, to give the flexibility to alternate the host LA1 between different partner local authorities.

Options and alternatives considered

- 4.7 Three Rivers District Council has offered to continue to deliver the LA1 functions in relation to contract management function and the audit and issue of statutory notices, with each partner authority signing off its own statutory notices, however, this option is not recommended because it is a more complex process than is necessary and there would be a separation from the audit and signatory process, without the appropriate expertise within each authority to provide the assurance oversight function.
- 4.8 Should no action be taken, the current Services Agreement with HBC will expire on 16 August 2022 which would result in the Council taking back in-house building control functions. There are currently no staff members who could provide this service in-house so a new team would need to be developed and recruited which is likely to be a difficult and lengthy process in the current recruitment market and, as a result, Building Control Services would be detrimentally affected.

5 IMPLICATIONS

Financial Implications

- 5.1 There are expected to be increased costs in the both the new temporary and permanent options in hosting the LA1 function. The temporary cost of the proposed approval mechanisms are expected to be £36,400 to the end of March 2023. This will be part funded by HBC and equally divided by subscribing Local Authorities. The cost to Stevenage is expected to be £2,700 - £3,00 for this period of time. There is potential for some ongoing cost in future financial years.

Legal Implications

- 5.2 Pursuant to section 101 of the Local Government act 1972, any function of a local authority may be delegated to another local authority. Building control is a statutory function within which certain functions cannot be delegated to any external body (other than another local authority) even if the body itself is wholly owned by other local authorities.

Risk Implications

- 5.3 The most significant risk is that, without an alternative the host functions for building control sign off will no longer be provided by TRDC at the end of the month. Stevenage Borough Council, and most of the other partner authorities, do not have the in house provision for this. Without alternative arrangements there is a direct risk to SBC and HBC in being unable to agree building control applications.
- 5.4 Should no arrangements be in place, operation of the service will revert back to SBC as it is a statutory requirement. The Council no longer employs any

Building Control professionals, no administration staff to support this service and therefore currently has no capacity. It would have to rely on expensive agency staff adding costs to the Council. Furthermore as Building Control is a competitive service, it would have to build up new businesses from customer from a very low customer base with a large risk of under achievement of income necessary to support the service.

Policy, Environmental and Climate Change Implications

- 5.5 HBC, as a provider of building control services to SBC, is actively proposing to de-carbonise its service to both its local authority partners and customers. The proposed re-confirmation of powers would enable HBC to continue provide the service on SBC's behalf.

Equalities and Diversity Implications

- 5.6 There are no proposed changes to existing staff or the way the services are provided to customers.

BACKGROUND DOCUMENTS

None.