

**CABINET
21 NOVEMBER 2017**

PART I – PUBLIC DOCUMENT

AGENDA ITEM No.

11

TITLE OF REPORT: BUILDING CONTROL COLLABORATIVE ARRANGEMENTS

REPORT OF THE CHIEF EXECUTIVE
EXECUTIVE MEMBER: COUNCILLOR DAVID LEVETT
COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

- 1.1 Cabinet is requested to:
- 1.1.1. consider the material changes to the Building Control Business Case (in accordance with its resolution of 15 December 2015); and
 - 1.1.2. pass a resolution to delegate statutory Building Control functions to one of the Building Control authorities ('LA1').

2. RECOMMENDATIONS

- 2.1 That the material changes to the Building Control Business Case are noted.
- 2.2 That Cabinet delegates Building Control Statutory Delegated Functions to LA1.
- 2.3 That authority is delegated to the Chief Executive and Corporate Legal Manager to enter into a proposed Inter Authority Agreement and continue with the project in accordance with the principles of the Business Case (as amended and detailed in this report).

3. REASONS FOR RECOMMENDATIONS

- 3.1 To enable the Building Control project to continue to the next phase.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 No alternatives are appropriate, following the decision of Cabinet on 15 December 2015 (and the requirement to report material changes to the Business Case), and the legal requirement to seek the further delegation.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Executive Member for Planning and Enterprise has been kept informed with regards to progress on the project. The Executive Member for Finance and IT has also been kept informed of the progress to date.
- 5.2 The Local Authorities involved in the project are also aware of the changes to the Business Case and the need for this further delegation.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 11 September 2017.

7. BACKGROUND

- 7.1 Cabinet will be aware of much of the background to this project from the reports presented in August 2014, March 2015 and December 2015. A report was also taken to the Finance, Audit and Risk Committee in December 2015.

- 7.2 At its meeting of 15 December 2015 Cabinet at item 95 (following the Part 2) resolved:

- (1) That the Business Case outlined in the report, and attached as Appendix A to the report, be approved;*
- (2) That the Council proceeds with the joint arrangements for the provision of the Council's Building Control functions;*
- (3) That authority be delegated to the Strategic Director of Planning, Housing and Enterprise, in consultation with the Executive Member for Planning and Enterprise, the Corporate Legal Manager and the Director for Finance Policy and Governance, to take all such steps necessary to complete the project in accordance with the principles of the existing Business Case, as require Cabinet approval; and*
- (4) That any material changes to the existing Business Case be reported back to Cabinet for consideration.*

- 7.3 Following the Cabinet resolutions worked continued on the project with the:

- Incorporation of the three companies on 04 February 2016:
 - Broste Rivers Limited, the holding company;
 - Broste Rivers LA7 Limited, delivering the local authority Building Control functions, subsequently renamed as Hertfordshire Building Company Limited (HBC);
 - Broste Rivers H7 Limited, delivering the commercial aspect of Building Control and associated functions, subsequently renamed as The Building Control Company (Hertfordshire) Limited.
- Staff TUPE'd over on 15 August 2016;
- Signing of the Shareholders Agreement, Articles of Association and Services Agreement on 17 August 2016;
- Procurement of a single IT platform and migration of the 7 Building Control services onto the platform;
- Formation of the two HBC Hubs in Borehamwood and Welwyn Garden City;
- Creation of three team areas based around the main roads, the A1, M25 and A10.

8. RELEVANT CONSIDERATIONS

- 8.1 Resolution 4 at paragraph 7.2 requires that any material changes to the Building Control Business Case be reported back to Cabinet for consideration. The key changes are that:

- It was anticipated that the Hertfordshire collaborative arrangement of 7 local authorities would participate with other county clusters to form an Eastern Region Building Control Partnership (ERBC) to benefit from even greater economies of scale and opportunities. This at the time was also considered a route to accessing Central Government Transformation Funding. The progress and size of the other clusters, in which discussions were underway, has since changed. Whilst Hertfordshire was and is open to having such discussions, no firm arrangements have been forthcoming;

- Within the ERBC arrangement a single IT solution was offered, developed by a local authority and supported within the Business Case with potential transformation funding offsetting the cost. The IT procurement exercise that was then undertaken as part of this project did not attract interest from that local authority;
- Within the Business Case it was envisaged that a single authority (referred to as LA1) would take on responsibility for Building Control functions, which could not be lawfully delegated to HBC, on behalf of all 7 authorities. Typically these functions are ones that legislation identifies as a duty on a local authority and primarily are:
 - The setting of fees for applications through a charging scheme¹;
 - The making of any decision (rejection, conditional approval or approval) regarding any plans deposited and the issuing of any certification (completion or fire safety);
 - Consultation with statutory agencies;
 - The keeping of statutory registers: with regard to initial notices;
 - Enforcement: unauthorised works, dangerous structures and demolitions.

The Business Case proposed the use of section 101 of the Local Government Act 1972 to delegate these functions. Following Cabinet's decision in December 2015, further external expert legal advice has indicated that where a Council operates under Executive arrangements, such delegations can only be made under Regulation 5(2)(a) of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 ('2012 Regulations');

- The Business Case also proposed that the LA1 authority would be staffed by a Building Control professional. It is now proposed that the LA1 Contract Manager (a non-Building Control professional) will actively consider the recommendations from HBC before issuing any decision. The Contract Manager will consider all recommendations based upon a set of policies and procedures to ensure that this is not just a rubber stamping process.

8.2 Work is continuing on updating the signed Services Agreement which relates to the services to be procured and delivered by HBC and preliminary work on a new Inter Authority Agreement (IAA) (in anticipation of the delegation of authority for decisions from 6 of the authorities to LA1. It is proposed, in the first instance, to be Three Rivers District Council).

8.3 The draft IAA requires that from the effective date North Herts warrants and represents that its Executive has passed a resolution approving the delegation of Delegated Statutory Functions to LA1 under the 2012 Regulations.

8.4 This report asks Cabinet to consider the material changes to the Business Case and to pass the 2012 Regulations resolution in order that the project can continue.

9. LEGAL IMPLICATIONS

9.1 The Building Control project has advanced in accordance with the Cabinet resolutions of 15 December 2015. As set out in paragraph 8 above, a further delegation is now required to enable the authority to delegate the statutory functions that HBC cannot legally perform, to LA1. As per the external expert legal advice obtained, only the Executive can delegate these Building Control functions to another authority under 5(2)(a) of the 2012 Regulations.

¹ Note the draft LA1 IAA proposes oversight of this process through a Commissioning Panel.
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- 9.2 Cabinet has authority under 5.6.11 of its terms of reference “*To approve those major service developments or reductions which also constitute Key Decisions.*” This decision therefore falls within Cabinet’s remit.

10. FINANCIAL IMPLICATIONS

- 10.1. When North Herts provided the Building Control service in house, each year revenue was declining resulting in year on year deficits. The Business Case explored a “do nothing” option which showed that by 2020/21 if North Herts carried on providing the service in house, the total cost to the general fund over a 5 year period would be £1.5million. The ongoing budgeted costs for Building Control is £86k per annum for non fee work. The expectation is that once LA1 is set up and the company sets the charging structure, the cost of non fee work should be less than £86k.
- 10.2. £53k was originally requested as part of the set up costs for the company to contribute towards the single IT platform, however this contribution was not needed as the company was able to fund the IT system itself. Each authority loaned the company £107,000 in 2016/17. There are no further capital implications arising from this report.
- 10.3. Further information is provided in the Part 2 report.

11. RISK IMPLICATIONS

- 11.1 Previous reports and the approved Business Case have considered the risk implications with regard this project. The material changes identified within this report do not, it is considered, result in any other specific risks being identified. HBC has been trading to a lesser or greater extent since August 2016 outside of any larger regional collaboration, a single IT solution has been procured and is operational and work on the policies and procedures to ensure the Contract Manager’s decisions are robust are underway. Birmingham City Council also issue decisions through a non-Building Control professional and contact has been made with that officer for any best practise and learning.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The move to provide Building Control services in a more commercial/cost effective manner could positively impact the cost/service delivered to customers in the longer term; the proposals also create greater opportunity for development of staff within our existing Building Control service than would otherwise exist.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and “go local” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1. The move to provide Building Control services in a more commercial/cost effective manner could positively impact the cost/service delivered to customers in the longer term; the proposals also create greater opportunity for development of staff within our existing Building Control service than may otherwise exist.

14.2. From November the company will be able to invoice customers directly. Previous to this North Herts had to take payments and the company invoiced North Herts monthly for the income. The staff administrative burden to North Herts of this process will now be removed.

15. APPENDICES

15.1 None.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 Report 81 Item referred from finance, audit and risk committee: 10 December 2015 - Building Control - 7 Hertfordshire authorities project; & 93 Building Control - 7 Hertfordshire authorities project (& to extent public) 95 Part 2 public resolution and in all cases Part I public minutes.
<http://web.north-herts.gov.uk/aksnherts/users/public/admin/kab12.pl?cmte=CAB&meet=93&arc=71Report>