

**CABINET SUB-COMMITTEE  
(Local Authority Trading Companies' Shareholder)**

**28 November 2024**

**PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: ANNUAL REVIEW OF NORTH HERTS TRADING COMPANIES – BUILDING CONTROL**

REPORT OF: IAN FULLSTONE SERVICE DIRECTOR REGULATORY

EXECUTIVE MEMBER: CLLR DANIEL ALLEN, INTERIM EXECUTIVE MEMBER FOR PLANNING & TRANSPORT

COUNCIL PRIORITY: THRIVING COMMUNITIES / ACCESSIBLE SERVICES / RESPONSIBLE GROWTH / SUSTAINABILITY

**1. EXECUTIVE SUMMARY**

To provide the Sub-Committee with the first annual report of the Local Authority Trading Companies (LATCos) in which North Herts Council has a role, to enable the Sub-Committee to fulfil its role as shareholder. The LATCos in this report cover the area of building control in which the Council is one of eight equal shareholders. The committee is also requested to consider what information they wish to be included in future reports.

**2. RECOMMENDATIONS**

- 2.1. That the Cabinet Sub-Committee note the report.
- 2.2. That the Cabinet Sub-Committee make recommendations on the content of future reports and annual reviews.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1. To enable the Cabinet Sub-Committee to fulfil its role and responsibilities as shareholder in the local authority trading companies for building control.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. No alternative options are considered as an annual report is considered best practise. Training on this was delivered to Cabinet members on 21 October 2024 by Local Partnerships an in-house public sector consultancy jointly owned by HM Treasury, The Local Government Association and the Welsh Government.

**5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1. As required by the Council's Constitution and the Shareholders Agreement, the Cabinet Sub-Committee are presented reports for Shareholder decisions. Executive Members

(and where appropriate Shadow Executive Members and Deputies) are briefed on the performance and key aspects of the trading companies.

## **6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

## **7. BACKGROUND**

- 7.1. This annual report will follow the guidance within the Local Partnerships publication 'Local Authority Company Review Guidance 2023 Edition'. The guidance states that it is important to ensure that all councils who own such companies maintain a watching brief on them and make any necessary adjustments.
- 7.2 The Council currently is one of eight shareholders of a group of companies, described below, covering the statutory function of building control.
- 7.3 Local Authorities (LAs) have a statutory duty to provide a Building Control service. This means that if an application is submitted to the authority, it has a duty to ensure that the works comply with building regulations. Originally LAs were the sole supplier of this service. However, in 1984 the Building Act established the legal framework for private building control bodies or Approved Inspectors (AIs). The first AI to be approved and registered was the NHBC in 1985. Since 1997 the Approved Inspector Regulations have enabled additional AIs to be registered. This competitive environment for all fee earning aspects of the building control service meant that it was and is more difficult for LAs to retain their market share and grow new commercial and domestic work to offset costs. Along with the difficulty of recruiting and retaining staff these factors led to the consideration of an alternative delivery solution in 2013.
- 7.4 Although offered to all 10 Hertfordshire boroughs and districts in 2013, the initial collaboration was of seven Hertfordshire local authority building control services: Stevenage, Hertsmere, Three Rivers, North Herts, East Herts, Welwyn Hatfield and Broxbourne. Reports were presented to Cabinet and the Finance Audit and Risk Committees at the time (2014, 2015 and 2017) along with a Business Case prepared on behalf of the seven authorities by the now Service Director Regulatory as Project Manager. Following support from all seven authorities the function of building control was resolved to be delivered through a wholly owned local authority series of companies
- 7.5 The statutory building control function being delivered through a single trading company known as Hertfordshire Building Control Limited (HBC). The Building Control Company (Hertfordshire) Limited (TBCC) was also established which then sought to deliver the commercial aspect of the building control service. These two companies being subsidiaries of the holding company Broste Rivers Limited. All three companies were incorporated on 4 February 2016.
- 7.6 In September 2019 the Cabinet Sub-Committee considered a report and resolved to support Dacorum Council joining the collaboration as an eighth equal shareholder.
- 7.7 In December 2021 the Sub-Committee considered a report to acquire further companies. Whilst the original building control business case outlined to Cabinet in August 2014 was a resilience model, with each of the local authorities recognising and seeking to

overcome numerous issues such as recruitment and retention, within their own small building control services by forming a collaboration to deliver the statutory service. It was also recognised as work progressed that the resulting collaborative venture would also allow for commercial opportunities with regard the delivery of building control services to other local authorities and the private sector outside of the administrative boundaries of the shareholders own authorities. These commercial opportunities were originally to be delivered through The Building Control (Hertfordshire) Company Limited which was envisaged to achieve Approved Inspector status. When an opportunity arose to acquire an established local authority owned Approved Inspector, this was considered and supported. As such, Build Insight Ventures Limited and its subsidiary companies, Build Insight Limited (a registered approved inspector) and Build Insight Consulting Ltd were acquired. In December 2023 Build Insight Ventures Limited and Build Insight Consulting Limited were dissolved.

- 7.8 In March 2023 the Sub-Committee considered a report concerning the Governance of decision making. The Building Act 1984 is the primary legislation governing building control. The Act identifies certain decisions that cannot be delegated by a local authority such as the issuing of statutory decisions, contract management and audit functions. Previously these non-delegable functions were undertaken on North Herts behalf, initially by Three Rivers and then East Herts. As none of the eight authorities wished to undertake this role going forward, following an options appraisal a secondment model was supported. Whereby named Hertfordshire Building Control Officers were formally seconded to each local authority for the discharge of non-delegable functions. As a result of this decision the Inter Authority Agreement between the eight shareholder local authorities was amended to reflect the change. In addition, the Sub Committee agreed to the Service Agreement through which building control services are contracted from HBC being changed from a fixed term services contract (which was due to expire) to a rolling contract for the provision of Building Control services. This showed the confidence that the shareholder authorities had in the delivery of services.
- 7.9 In July 2023 the Sub-Committee considered a further report and supported proposed amendments to the Shareholder Agreement. The Shareholder Agreement was the final document to be reviewed following those reviewed in the March 2023 report. The review sought to ensure that following the operation of the companies into a steady state that they had sufficient autonomy to operate whilst the shareholders were able to demonstrate robust decision making. The primarily changes included amendments to *Unanimous Shareholder Decisions* and *75% Shareholder Decisions*, together with new *Simple Majority Shareholder Decisions* and *Board Decisions* and a new *Reserved Matters protocol*.
- 7.10 As can be seen there have been numerous reports presented to Cabinet and its Sub-Committee over the period since the establishment of the wholly owned building control companies. The Council is currently represented by the Service Director: Regulatory as the Shareholder representative (previously acting as a Director). The Service Director: Enterprise is the North Herts Director of the companies.

## **8. RELEVANT CONSIDERATIONS**

- 8.1. As stated in paragraph 7.1 following the training session this annual report will follow the Local Partnerships publication 'Local Authority Company Review Guidance 2023 Edition' (link at 18.1). Members may wish to consider in advance of future such reviews that the officer shareholder representative or another independent officer undertake the review

following the format within the guidance, including Sections 6 (Standard Documents Required for a Review) and 7 (Guidance Checklist for Elected Members). It will also be useful to incorporate the views of the Sub-Committee into any such review.

- 8.2. As can be seen from the section 7 above, the Governance arrangements have been reviewed since inception to ensure that the company has sufficient freedoms to achieve its objectives. In addition, the legal agreements have also been reviewed not only for the benefit of the company but also to ensure the Council is retaining sufficient control as can be seen from the recent review of the Shareholder Agreement. It is important that the Council retains control over the companies, as this is a measure to demonstrate we are compliant with Teckal rules (in relation to procurement). The two keys test are control and functional.
- 8.3. The relevance of the adopted delivery model has also been reviewed, as can be seen by the move to the secondment arrangement and a rolling services contract as detailed above in paragraph 7.8.
- 8.4. Business planning is a key aspect and the companies' Senior Management Team and all Directors are part of the business planning process, as part of this the Chief Executive Officer holds an away day where they discuss and develop the business plan and agree the financial target for the following year.
- 8.5. In recent years, the Directors of the company have undertaken appropriate training which includes 'the role of a director' and 'financial management of a company.'
- 8.6. The companies Chief Executive Officer and the Finance Director meet with the Council Chief Finance Officers at least annually. If there are any matters of concern then the meetings have been more frequent.
- 8.7. The Chief Executive Officer for Herts Building Control has been liaising with our Shared Internal Audit Service and the aim is to undertake two audits next year, these will cover governance and cyber security.
- 8.8. Regular Shareholder meetings are held, these also include Directors and Chief Financial Officers where appropriate. The Shareholder Representative and the Director are attending an AGM post the publication of this report and will provide an update at the Sub-Committee meeting.

## **9. LEGAL IMPLICATIONS**

- 9.1. Under 5.12 of the Council's Constitution the roles and functions of the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) are listed including: (a) To represent the Council's interests as shareholder in wholly owned and other companies.
- 9.2. Under 14.6.11 (b) (i) of the Council's Constitution the Service Director – Regulatory has delegated powers with regard Building Control including client-side Building Control company operational matters as required under any agreements, in addition to all activities relating to discharge of the Council's function as the Local Building Regulation Authority.
- 9.3. Expert external legal advice has been sought with regard legal agreements and the initial setting up of the companies.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The Building Control group of companies had seen a gradual rise in gross income up until 2022/23 (with a small downward blip post Covid-19 in 2020/21). Over that time the net asset position of the company (before defined benefit pension position) had also gradually improved. The group income reduced in 2023/24 and resulted in the group going back to a net loss (before pension adjustments). The Directors have put in place plans to improve the trading position, and this is having a positive effect. As at 31 March 2024, the company had reserves of £937k, although these are significantly impacted by the defined benefit pension position (i.e. employees that have retained Local Government pensions) which is currently in surplus.
- 10.2 The Councils support the company with a loan of £107k each, which the Company pays interest on (set at a market rate when the loan was granted). The Councils also support the Going Concern position of the Companies by confirming that they will not withdraw the loan unless the Companies have determined that they can afford to repay it.
- 10.3 The Councils all pay the company to provide statutory services on their behalf. For 2024/25 this charge will be around £30k. This is significantly less than the net cost of running the whole service directly. The Council pays other costs to the company, but these are ones for which a local authority would be responsible. For example, applications for works that benefit a disabled person(s) are exempt from a fee under the regulations, as such, this cost is reimbursed to HBC. A 24/7 dangerous structure service is provided for North Herts and where possible associated costs are claimed back but, in the case, where a call-out occurs and there is no danger requiring action the costs of the call out are covered.
- 10.4 The original business case projected a cost to the General Fund if the Council did not join the consortium of circa £1.34m between 2017/18 and 2020/21. A projection to 2025/26 indicates that the additional cost to the Council compared to the current budget of not joining would be circa £2.76m (over £400k increase in 24/25).
- 10.5 The Company pays a contribution to each of the Councils to contribute towards the reimbursement of the Directors' time in running the company.

## **11. RISK IMPLICATIONS**

- 11.1. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.
- 11.2 There is always risk in operating in a commercial environment. The Directors of the company are expected to make decisions to manage those risks and react to trading conditions. Where decisions require shareholder approval then these will be reported to the sub-committee for a decision. These additional annual reviews/ update reports provide the sub-committee with an awareness of the opportunities and risks that are facing the companies.

- 11.3 The most significant risks facing the Council in relation to any Company failure would be:
- Reputational impacts.
  - Financial losses from any unpaid loans (although the values are not very significant).
  - The requirement to deliver statutory Building Control services.
  - The economic climate that relates to construction, both the domestic and larger scale markets.

11.4 The Building Control companies are subject to external audit. This helps provide assurance (alongside Council oversight) of their financial position.

## **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. There are no equalities implications arising from this report.

## **13. SOCIAL VALUE IMPLICATIONS**

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

## **14. ENVIRONMENTAL IMPLICATIONS**

14.1. There are no known Environmental impacts or requirements that directly apply to this report.

## **15. HUMAN RESOURCE IMPLICATIONS**

15.1 There are no direct HR implications arising from this report.

## **16. APPENDICES**

16.1 None.

## **17. CONTACT OFFICERS**

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17.7 Jodie Penfold, Group Accountant, [jodie.penfold@north-herts.gov.uk](mailto:jodie.penfold@north-herts.gov.uk); ext 4332

## 18. BACKGROUND PAPERS

18.1 Local Authority Company Review Guidance 2023 Edition [LATCo guidance 2023 edition - Local Partnerships](#)

18.2 Previous Cabinet / Sub Committee reports:

- August 2014 item 35: [Meeting of Cabinet on Tuesday, 5th August, 2014, 7.30 pm | North Herts Council](#)
- March 2015 items 126 & 128: [Meeting of Cabinet on Tuesday, 24th March, 2015, 7.30 pm | North Herts Council](#)
- December 2015 item 81: [Meeting of Cabinet on Tuesday, 15th December, 2015, 7.30 pm | North Herts Council](#)
- November 2017 item 60 & 62: [Agenda for Cabinet on Tuesday, 21st November, 2017, 7.30 pm | North Herts Council](#)
- September 2019: [Agenda for Cabinet Sub-Committee \(Local Authority Trading Companies' Shareholder\) on Friday, 20th September, 2019, 3.00 pm | North Herts Council](#)
- December 2021: [Agenda for Cabinet Sub-Committee \(Local Authority Trading Companies' Shareholder\) on Tuesday, 21st December, 2021, 9.00 am | North Herts Council](#)
- March 2023: [Agenda for Cabinet Sub-Committee \(Local Authority Trading Companies' Shareholder\) on Wednesday, 1st March, 2023, 10.00 am | North Herts Council](#)
- July 2023: [Agenda for Cabinet Sub-Committee \(Local Authority Trading Companies' Shareholder\) on Friday, 21st July, 2023, 10.00 am | North Herts Council](#)