

TUESDAY, 11 DECEMBER 2018

REPORT OF THE PORTFOLIO HOLDER FOR HERITAGE AND GROWTH

BUILDING CONTROL SERVICES

EXEMPT INFORMATION

None

PURPOSE

To seek approval to terminate the existing arrangements for the delivery of the Councils Building Control responsibilities and enter into a new arrangement.

RECOMMENDATIONS

It is recommended that Cabinet:

- a) Approve the proposal to enter into a new Building Control Partnership with Lichfield District Council, South Staffordshire Council, Nuneaton & Bedworth Borough Council, South Derbyshire District Council and North Warwickshire Borough Council with effect from 1 April 2019 to be hosted by Lichfield District Council;
- b) Authorise the Chief Executive following consultation with the Portfolio Holder for Heritage and Growth to:
 - i. Approve the terms of the new Building Control Partnership and to enter into any necessary agreements or arrangements;
 - ii. Subject to terms for the new Building Control Partnership being agreed, and similar approvals being obtained by Lichfield District Council and South Staffordshire Council, approve the arrangements and terms for the termination of the 2015 Building Control Collaboration Agreement between the Council, Lichfield District Council and South Staffordshire Council and to enter into any agreements or other documents required to document the termination;
- c) Authorise the Chief Executive, following consultation with the Portfolio Holder for Heritage and Growth, to agree the detailed terms upon which Lichfield District Council will discharge the building control functions set out at Appendix A;
- d) Approve that a retained fund be established to manage the surplus redistributed from the existing partnership.

EXECUTIVE SUMMARY

The Council currently has delegated its building control functions to Lichfield District Council which are undertaken as part of a partnership between Tamworth Borough Council, Lichfield District Council and South Staffs Council. Work has been ongoing for a number of years looking at ways of ensuring that the Partnership remains efficient and effective with particular emphasis on the expansion of the Partnership. It is considered that expanding the partnership will lead to efficiencies, will help with staff recruitment and retention, provide resilience, protect and increase market share and lead to opportunities for business growth. It is therefore proposed to terminate the existing partnership and to commence a new partnership between Lichfield District Council, South Staffordshire Council, Nuneaton & Bedworth Borough Council, South Derbyshire District Council and North Warwickshire Borough Council with effect from 1 April 2019 to be hosted by Lichfield District Council. Further work is

required to finalise the partnership agreement and it is proposed that to enable this work to be done and the new arrangements to be put in place on the 1st April 2019 that the Chief Executive in consultation with the Portfolio Holder for Heritage and Growth is given delegated authority to finalise the new arrangements and agreements.

OPTIONS CONSIDERED

1. Return the function in-house

This option is dismissed due to the likely increase in costs to the authority and the lack of resilience.

2. Outsource

This option is dismissed due to the likely increase in costs and the deliverability of the option. Given the building control market in Tamworth is small, it is unlikely that private a firm would wish to undertake the full range of services (elements are non-chargeable) which would then need to be undertaken.

3. Seek a new partnership

This option is dismissed as there is likely to be no cost benefit. Neighbouring authorities are part of the proposal and therefore travel costs may increase.

4. Do nothing

The existing Partnership could carry on (assuming the other parties wished it to), however, it is estimated that income may reduce and net costs would rise.

RESOURCE IMPLICATIONS

The Council currently contributes £35,200 per annum as well as officer time and it is proposed that this remains unchanged for years 1 to 3. Each Council will make the same contribution to cover the costs of the service. The draft partnership agreement requires the host to provide to us a financial statement by the end of November that details the following years costs. The governance arrangements should ensure that costs are known and agreed in advance of this date. The business plan identifies that from year 4, it is hoped to charge each partner an actual cost for non chargeable work undertaken in their area. As Tamworth is one of the smaller authorities and has less non-chargeable work activity taking place, this is likely to lead to a reduction in costs. However, this will be subject to review in year 3.

There exists a surplus from previous years activity that was due to be reinvested in the service. This will be split equally at the end of the existing partnership and returned to each authority for investment in building control activity in the future (currently estimated at £20k to £50k dependent on spend by 31st March).

A member of staff was subject to TUPE to the shared service in 2009. If Tamworth were to withdraw there is currently no obligation in either the existing or future agreement that would require Tamworth to take back staff.

LEGAL/RISK IMPLICATIONS BACKGROUND

The Council has received legal advice on how to exit the existing partnership and enter into the new one which is reflected in the wording of the recommendations. The advice recommends that Tamworth BC, Lichfield DC and South Staffs Council agree in writing (by deed) that the Collaboration Agreement is to terminate and then document the consequential changes, transfers and apportionments. This can either be dealt with in the new Agreement or in a separate document.

Advice has been received on the delegation of functions in relation to the Sections 9EA and 9EB, Local Government Act 2000 (2000 Act) and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 (2012 Regulations) which is reflected in the wording for the recommendations.

Further advice has been received on the use of the existing surplus and there is nothing to preclude Lichfield District Council distributing the surplus between the existing 3 Councils, however, this can only be used to invest in Building Control Services. It is recommended a retained fund be established to manage this fund. Advice has also been given on the governance requirements and this will be utilised in finalising the partnership agreement.

A number of risks have been identified as part of the business case.

SUSTAINABILITY IMPLICATIONS

The business case for the expansion of the partnership is based on providing economies of scale, increasing staffing resilience and strengthening market share to lead to keeping net costs at the same or lower level.

BACKGROUND INFORMATION

Building standards ensure a built environment that is safe, healthy, accessible and environmentally sustainable. The minimum building standards are set out in the Building Regulations. These standards reflect the Council's priorities in terms of what they want to achieve from the built environment.

Building Regulations are highly comprehensive, far reaching and cover all aspects of building design and construction. From structure and fire safety to energy efficiency and sound transmission. They form a significant part of government plans to reduce carbon emissions and provide a sustainable environment. Local authorities have a statutory duty to enforce these standards.

Contravention of the Building Regulations is a criminal offence and powers exist to prosecute offenders and pull down or remove defective work. Building Control Officers work closely with builders, architects, engineers and the public to advise and carefully monitor progress of building work. Completion Certificates are issued to confirm compliance.

The Building Control Service as it relates to plan checking and inspections generates income through the payment of fees. However functions such as advice and enforcement are funded directly from revenue. The service is unique for an enforcement body in that, whilst being responsible for non-rechargeable statutory functions, it also has to compete for its fee-earning work against private sector companies who are commercial, profit-making organisations. These companies have no enforcement powers and must hand back work to Building Control when enforcement is needed.

In December 2008, Cabinet recommended that Council consider a proposal to create a shared building control service with Lichfield District Council due to the benefits identified. On the 24th February 2009 Council approved the proposal. In December 2011 Council approved the expansion of the existing Partnership to include South Staffordshire Council. In October 2014 Cabinet approved the renewal of the partnership agreement.

The current Partnership, which consists of the portfolio holder from each of the three authorities indicated their willingness to expand the Partnership on the understanding there were no increase in costs to the Councils. Since 2016, work has been ongoing involving all the Districts and Boroughs across Staffordshire to consider opportunities for improving resilience and reducing costs. Furthermore, adjacent Districts showed an interest in participating. An outline business case was prepared and developed. However in 2017 Stoke, Newcastle and Moorlands advised that they no longer wished to participate and earlier this year Stafford and Cannock also withdrew from the project. East Staffs Council have stated that they are interested in participating in the future but not at the current time. The business case has therefore been revised and the proposed new partnership will cover Tamworth BC, Lichfield DC, South Staffs District Council, Nuneaton and Bedworth BC, North Warwickshire BC and South Derbyshire DC.

The proposal is to establish a shared service, providing a full range of building control services to the partners and their customers. The partnership is to be hosted by Lichfield District Council. A business case has been developed as part of the project.

It is proposed that whilst Lichfield will host the partnership and employ the staff, management oversight will take place via a management steering group which will consist of a representative from each authority. The purpose of this group will be to provide client monitoring. It will receive detailed

performance reports, business plans, budgets and any proposals for fee changes. There will also be a Partnership Advisory Board or shared service joint committee which will consist of the relevant portfolio holder from each authority and the officer. The purpose of this group will be to receive high level performance reports and make recommendations on service delivery. The final terms and governance arrangements need further work, to be clear about how decisions are taken and the roles and responsibilities of the officer and members groups and to reflect this in the partnership agreement.

The Council currently contributes £35,200 to the Partnership, as do Lichfield DC and South Staffs Council. This covers the cost of the non-chargeable work. It is proposed that initially the contribution will remain at be £35,200 but the business plan considers amending how cost are apportioned from year 4. This could lead to a lower cost to Tamworth BC.

REPORT AUTHOR

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LIST OF BACKGROUND PAPERS

Report to Cabinet, "Building Control Service", 17th December 2008

Report to Council, "Building Control Service", 24 February 2009

Report to Cabinet, "Building Control Partnership", 23rd November 2011

Report to Full Council, "Building Control Partnership Agreement Amendments" December 2011.

Report to Cabinet, "Southern Staffordshire Building Control Partnership Agreement Renewal", October 2014

Draft Business Case

APPENDICES

- A. Building Control functions