

Cheltenham Borough Council

Cabinet – 8 October 2019

Building Control renewal of shared service partnership agreement with Tewkesbury Borough Council

Accountable member	Cllr Andrew McKinlay, Cabinet Member Development and Safety
Accountable officer	Mike Redman, Director of Environment
Ward(s) affected	All
Key Decision	Yes
Executive summary	<p>Cheltenham and Tewkesbury Building Control currently operates as part of a shared service agreement which commenced on the 1st November, 2009, for an initial period of 10 years.</p> <p>Under the Building Act 1984, local authorities have a duty to enforce the requirements of the Act and the Building Regulations to ensure that buildings meet at least the minimum health, safety, welfare, convenience and sustainability standards.</p> <p>In addition to the statutory duties required, the service has been in direct competition with Approved Inspectors (the private sector) since January 1997. Councils have been required to set their own charges since April 1999 and The Building (Local Authority Charges) Regulations 2010 state that costs can be recovered based on officers hourly rate for undertaking a chargeable function or providing chargeable advice. Taking one financial year with another, the regulations require a review of the charges scheme to ensure the chargeable income as near as possible equates to the chargeable costs.</p> <p>An efficient and effective Building Control service helps to minimise the possibility, or likelihood, that the Council will have to subsidise non-fee earning elements of the service from general funds.</p> <p>This report recommends the continuation of the shared services arrangement for a further 10 years.</p>

Recommendations

- a)** To approve maintaining the shared service between Cheltenham Borough Council and Tewkesbury Borough Council for a ten year period from expiry of the current agreement
- b)** To accept the continued delegation of Tewkesbury Borough Council's building Control functions to Cheltenham Borough Council, as host authority, in accordance with a new agreement under Section 101-(1) of the Local Government Act 1972 and Part 1A Chapter 2 section 9EA of the Local Government Act 2000 and pursuant to the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.
- c)** To delegate authority to the Director of Environment in consultation with the Cabinet Member for Development and Safety and the s151 Officer, to enter into the s101 Agreement and any other required legal documentation and to take all necessary steps to implement the above mentioned resolutions.

<p>Financial implications</p>	<p>Building Control fee earning work is funded through charges that each Authority charge and is expected to cover the cost of providing the service. In addition, the council should fund the statutory non fee earning building control functions.</p> <p>An efficient and effective Building Control service will help to minimise the possibility or likelihood that the Council will have to subsidise non-fee earning elements of the service from general funds. In line with the legislation, the service can be separated as chargeable functions, non-chargeable functions and statutory duties.</p> <p>In addition to the statutory duties required to be undertaken by the Local Authority Building Control, the service has been in direct competition with Approved Inspectors since January 1997. Councils have been required to set their own charges since April 1999 and The Building (Local Authority Charges) Regulations 2010 state that costs can be recovered based on officers hourly rate for undertaking a chargeable function or providing chargeable advice. Taking one financial year with another, the regulations require a review of the charges scheme to ensure the chargeable income as near as possible equates to the chargeable costs. In summary, Building Control should not make 'profit or surplus' instead any income should be reinvested for the good of the service.</p> <p>Therefore the ongoing partnership will allow both councils to continue to invest into this service. Also, the service is looking to new opportunities to explore new revenue streams outside of the core building control functions which would contribute to reducing the cost of the non-chargeable / statutory duties. This will be reviewed for the next budget round.</p> <p>Contact officer: Andrew Knott andrew.knott@cheltenham.gov.uk 01242 264121</p>
<p>Legal implications</p>	<p>The expiry of the current s101 Agreement on 31st October 2019 means that the partner Councils will be required to decide on the future delivery of the service. If the recommendations are agreed, the Councils will need to enter into a new agreement in accordance with section 101-(1) of the Local Government Act 1972 and Part 1A Chapter 2 section 9EA of the Local Government Act 2000 and pursuant to the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 ('the s101 Agreement').</p> <p>Contact officer: Shirin Wotherspoon Head of Law (Commercial) One Legal shirin.wotherspoon@tewkesbury.gov.uk, 01684 272017</p>

HR implications (including learning and organisational development)	<p>No specific changes are proposed to the terms and conditions of service of staff who, will remain the employees of their current employing authority (Cheltenham Borough Council). Human Resource support for particular members of building control staff will continue to be provided by the employing authority.</p> <p>Contact officer: Clare Jones HR Business Partner Business Support Services clare.jones@publicagroup.uk 07747 236741</p>
Key risks	<p>Service risks are monitored by the Joint Monitoring Liaison Group (JMLG) on a regular basis - see Appendix 1.</p>
Corporate and community plan Implications	<p>The principles contained within the CBC Corporate Plan relate to communities, economy, technology and being commercially minded. Collaborative working with Tewkesbury Borough Council provides the opportunity to enable enhanced delivery of the Building Control Service that contributes to these priorities. The intention is continue to pursue efficiencies through a programme of continuous improvement and to identify new and innovative delivery opportunities whilst maintaining an excellent service to the public.</p>
Environmental and climate change implications	<p>The shared Building Control service between Cheltenham and Tewkesbury Borough Councils has now been operating successfully and in competition with the private sector for 10 years. It aims to ensure that, within practical limits, buildings now being constructed or altered are in compliance with the Regulations and that they provide a safe, healthy, convenient, accessible and efficient environment for all residents, workers and visitors to both Cheltenham and Tewkesbury.</p> <p>The energy efficiency of new and existing buildings will be an important component of future actions to address both partner authorities and the government's ambitions for reducing carbon emissions, in response to the identified climate emergency.</p>
Property/Asset Implications	<p>None as a direct result of this report.</p> <p>Contact officer: Dominic.Stead@cheltenham.gov.uk</p>

1. Background

1.1. Cheltenham and Tewkesbury Building Control currently operate as part of a shared service agreement which commenced on the 1st November 2009 for a period of 10 years. As that agreement is due to expire Officers have been reviewing the existing agreement and considering options moving forward for both Councils. A small officer task and finish group was set up involving finance officers from both Authorities and representatives from One Legal. This group has considered a number of options. The Joint Monitoring Liaison Group (which

is made up of Officers and Members from both Authorities) has also been kept abreast of option development and has received reports and presentations on the options moving forward.

1.2. In line with the legislation mentioned above, the service can be separated as follows:

Chargeable function:

- Substantive pre-application advice.
- Receipt / validation and registration of Full Plans, Building Notice and Regularisation applications.
- Vetting applications, undertaking statutory consultations, seeking additional information and checking amendments.
- Accepting, rejecting or approving applications.
- Undertaking site inspections and the issue of completion certificates on satisfactory completion of the work.
- Reversion applications – where work being undertaken under the supervision of an Approved Inspector reverts back to the local authority.

Non-chargeable function:

- Local land charge responses and search enquiries from solicitors.
- Advice to other local authority services and councillors.
- Involvement in corporate initiatives and reports.
- Surveying and inspection work to assist other Council services e.g. Housing, Education, Trading Standards, Environmental Health, Property and Planning.
- Liaison with Planning Officers and Planning Enforcement team.
- Access Auditing Services.

Statutory activities:

- Building Control enforcement – taking formal enforcement action for contraventions of the Building Regulations.
- Investigating reports of unauthorised works.
- Approved Inspector legislation – Registration of Initial Notices, Final Certificates.
- Applications involving works undertaken for disabled people.

- Control of demolition work.
- Taking action in respect of incidents involving reported dangerous structures.
- Competent Person Scheme administration.
- General enquiries from the public.

Note:- These are statutory functions which a Council has to provide and fund even if the service is outsourced. Appendix 2 sets out the categories of functions in diagrammatic form.

2 Current position

2.1 The building control team is made up of a team of 7 officers - 1 Building Control Manager, 1 Building Control Principal Officer, 2 Officers and 3 technicians. In the last financial year they dealt with 1,354 Building Control applications across both Local Planning Authorities. The income for the last four years is as set out below.

Table 1.0 Building Control Income

District	2015/16	2016/17	2017/18	2018/19
Cheltenham BC	£345,252	£358,155	£355,250	£356,863
Tewkesbury BC	£210,008	£202,586	£212,870	£182,455
Total	£555,260	£560,741	£568,120	£539,318

During the 2018/19 year the team have Implemented a number of service improvements these include:

- £6,500 invested on street naming and numbering idox module to improve service, create staffing efficiencies.
- Staff costs reduced by £45,000 against budget by introducing 'grow your own' staff training development.
- Standalone Building Control website developed with the assistance of Tewkesbury Borough IT Service and launched September 2018.
- Staff time recording developed to demonstrate cost recovery per application and allow effective analysis of time spent on chargeable/non chargeable works in either Borough.
- Developed branding through website and site signage boards.

The shared service is currently undertaking activities to gain ISO 9001 certification.

3 Reason for recommendations

To secure agreement to the continuation of the Cheltenham and Tewkesbury Building Control service partnership which operates as a shared service across the two administrative boroughs served by the two local authorities.

The key provisions in the s101 are:

- Term: 10 year period that can be terminated by either Party upon the fifth anniversary or by serving not less than 12 months' notice thereafter
- The Services: the services comprise:
 - Statutory functions
 - Street naming and numbering
 - The new services as set out in the 101 agreement following the production of the Business Case and Options appraisal
- Service Delivery [KPIs] and service monitoring
- Location: Cheltenham Borough Council Offices

Financial Arrangements:

- CBC to operate a chargeable account for the partnership
- CBC to operate a non-chargeable account for the partnership
- CBC to operate a third party income account for the partnership
- The chargeable account is to be funded by fees payable with any surplus/deficit being retained by CBC for reinvestment into the service
- CBC to ensure that the chargeable account breaks even on a rolling basis
- CBC to charge TBC 50% of the cost (excluding recharges) for the non-chargeable account
- CBC to charge / pay TBC 50% of the cost (excluding recharges) / net income (excluding recharges) for the third party income account

Governance: The existing Joint Monitoring and Liaison Group will continue

4 Alternative options considered

The objective for the Cheltenham and Tewkesbury Building Control Service has always been to deliver the most appropriate, cost effective and efficient service for both authorities. It is however always beneficial to review options available. Alternative service delivery options have been considered as set out below:

1. To continue to deliver the shared service without change.
2. To maintain the existing shared service model but adapt and change service provision methods, to reflect market forces and competition.
3. To link the shared service to an existing Local Authority Teckal company (e.g. Publica / Ubico).
4. To set-up the shared service as a new standalone Local Authority Teckal company.
5. To set-up as a standalone Approved Inspector.
6. To outsource to another service provider (e.g. Approved Inspector or other Local Authority).
7. Each authority to terminate the shared working agreement and take the service back in house.
8. Expand the existing shared service to include other Local Authority Building Control teams.

Following detailed consideration by officers and the JMLG, the recommendation is that Option 2 is pursued, which will allow the partner Councils to maintain the existing shared service model, but adapt and change service provision methods, to reflect market forces and competition. To that end a business case detailing the opportunity of the service has been produced and objectives identified.

5 Consultation and feedback

The proposals in this report have been the subject of consultation with the Joint Monitoring Liaison Group (JMLG) overseeing the current shared service arrangements. In addition, there has been discussion at both authorities Executive Leadership Teams.

The potential for future expansion of the shared service to include Stroud and Gloucester City Councils has been discussed, but has not been progressed.

Cheltenham lead Cabinet Member for the service is supportive of the proposals within the report.

6 Performance management –monitoring and review

Service performance is managed via regular management meetings between Cheltenham Borough Council and Tewkesbury Borough Council, through a Joint Monitoring Liaison Group (JMLG) comprising officers and members from each authority.

Report author	Contact officer: Ian Smith Building Control Manager ian.smith@cheltenham.gov.uk 07818 043693
Appendices	<ol style="list-style-type: none">1. Risk assessment2. Diagram – building control chargeable functions.3. Service delivery options report-Exempt4. Business plan for agreed option- Exempt5. Draft S101 Agreement

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
R.01	<p>Failure to retain suitably qualified and experienced staff.</p> <p>If staff leave to work for a competitor paying higher wages/better working conditions then Building Control may be unable to perform its duties to the current high standard.</p>	Mike Redman (MR)	3/09/2019	5	5	25	Change	Work closely with HR to develop an effective benefits package and associated recruitment strategy.		IS	
R.02	<p>Possibility of loss in market share due to competition of Approved Inspectors.</p> <p>If significant amount of work is lost to competitive approved Inspectors then target income will not be achieved.</p>	MR	3/09/2019	5	4	20	Change	<p>Introduction of a targeted marketing strategy.</p> <p>Increase training to support customer attractiveness through added value services.</p>		IS	
R.03	<p>ICT system alignment between authorities.</p> <p>If the ICT systems used by Cheltenham and Tewkesbury are not aligned or compatible then work will continue to cost the Shared Service more than it should due to built-in inefficiencies.</p>	MR	3/09/2019	2	6	12	Change	Discuss with our respective ICT team how to better align business systems. Obtain finance for investment based on business case.		IS / ICT	

R.04	<p>Changing Government Legislation. Competition targeting different type of projects affecting workloads.</p> <p>If competitor Approved Inspectors are not allowed to provide a service for certain types of complex buildings or their insurers will not insure them, this will lead to increased competition in relation to domestic projects, which is the bulk of our current workload.</p>	MR	3/09/2019	3	3	9	Accept	Keep updated with prospective Government legislation through LABC and react accordingly with staffing levels and appropriate training.		IS	
R.05	<p>Customer confidence in working with a Shared Service.</p> <p>If customers are not happy to use the service of what they perceive as a neighbouring authority, or surveyors they are not familiar with, then they may choose to use a more locally based approved Inspector.</p>	MR	3/09/2019	3	2	6	Accept	Introduction of Marketing strategy for the Shared Service.		IS	
R.06	<p>Disagreement over the division of costs.</p> <p>If the joint working authorities disagree about</p>	MR	3/09/2019	2	4	8	Accept	Discussion at JMLG to reduce impact.		MR	

	the division of any central costs, it could result in possible legal issues between the authorities.										
R.07	<p>Weaker financial controls.</p> <p>If the new joint agreement does not clearly define the financial arrangements, it could result in disagreement between the authorities and lead to possible legal implications.</p>	MR	3/09/2019	2	4	8	Accept	Discussion at JMLG to reduce impact.		MR	

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close

Figure 3.1: Establishing the building regulations chargeable costs

