
Building Control Shared Service Agreement

Committee considering report:	Executive
Date of Committee:	14 March 2024
Portfolio Member:	Councillor Lee Dillon
Date Portfolio Member agreed report:	1 March 2024
Report Author:	Sean Murphy
Forward Plan Ref:	EX4474

1 Purpose of the Report

- 1.1 To agree the principle of entering into a new shared service agreement and continuation of the existing partnership with Wokingham Borough Council by the 1st April 2024 to deliver building control functions, ensuring that the service is delivered on a cost recovery basis to meet the statutory obligations of the Council.
- 1.2 Significant changes come into effect from April 2024 with the implementation of the Building Safety Act and the introduction of the Building Safety Regulator's powers requiring all practising Building Control Surveyors to become Registered Building Inspectors. The implications of these changes require Building Control services operating as a shared service to formalise their arrangements through an agreement under the Local Government Act 1972 and other relevant provisions by 1st April 2024.

2 Recommendations

- 2.1 That the Executive approves the Council entering into new shared service agreement for a five year period (with an option to extend) for building control services under Section 101 of the Local Government Act 1972 and other relevant provisions with Wokingham Borough Council to come into effect from 1st April 2024.
- 2.2 That delegated authority be given to the Executive Director: Place to finalise and sign the new agreement in consultation with the Service Director (Strategy & Governance), Service Lead (Legal & Democratic Services) and Executive Member for Public Safety.
- 2.3 That an Annual Report be prepared for West Berkshire Council.

3 Implications and Impact Assessment

Implication	Commentary
<p>Financial:</p>	<p>Funding for the Service is split into two parts, the first being a ringfenced fee earning element which accounts for 83% of the budget and a separate non-fee earning element for the non-chargeable work which comprises 17% of the budget. More information about the activity associated with each element is set out in paragraph 5.8 of the report.</p> <p>Both partner authorities contribute towards the non-chargeable costs of running the Team (17%). The level of funding is split based on the activity (and therefore income generated) within each authority area. The split is currently 33% for West Berkshire and 67% for Wokingham. The total cost to West Berkshire is therefore £80k per annum with the remaining balance being funded by Wokingham. The percentage splits will be reviewed on an annual basis to ensure that they reflect the activity being undertaken in each partner area.</p> <p>Prior to West Berkshire entering the partnership in 2016, the budget outturn totalled £141k against a budget of £131k.</p> <p>In addition, West Berkshire Council receives a £30k re-charge from Wokingham towards their management costs and other overheads.</p> <p>In terms of the fee earning ringfenced element (83%) of the budget there is a legal requirement for the ringfence element of the service to operate on a cost neutral basis over a three year cycle. Any increases in costs will therefore need to be offset by increases in income. This significantly mitigates any financial risks to the partner authorities. Currently the service has a reserve of £92K. The shared service has had a positive reserve position since it has been in existence. This has also funded systems development etc.</p> <p>In summary, all income and expenditure remain within the ringfence and do not have any financial impact on either authority in the partnership. This includes an allocation of corporate recharges from both authorities and all other costs associated with operating the service are included and recovered. Finally, the agreement will specify the means of disaggregating this fund at the point the contract is dissolved.</p>
<p>Human Resource:</p>	<p>All employees employed in the provision of a West Berkshire Building Control Consultancy service on 30th June 2016 were</p>

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	<p>transferred to Wokingham Borough Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Staff within the Building Control team are employed by Wokingham Borough Council who act as the lead authority for the provision of this service. This proposal does not seek to amend this arrangement.</p> <p>It has been historically difficult to recruit to this sector nationally which was one of the main drivers for West Berkshire Council entering into the agreement in the first instance. The Service is currently operating with more surveyor vacancies than staff that would be required to provide a stand-alone service in West Berkshire. Recruitment and retention require significant market supplements to compete with the private sector and even then recruitment is very difficult.</p> <p>The development and delivery of an annual training and development strategy to be agreed by the parties will form part of the service specification.</p>
<p>Legal:</p>	<p>The arrangement for the discharge of function was made under the provisions of Section 101 of the Local Government Act 1972, Section 9EA of the Local Government Act 2000 and Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 when the partnership was first set up.</p> <p>The delivery of a building control service is a statutory obligation placed upon local authorities, under Section 91 of the Building Act 1984.</p> <p>The Building (Local Authority Charges) Regulations 2010 govern how building control services operate, in terms of setting and collecting fees for a specific range of activities (chargeable functions), the overriding objective being to ensure that, as near as possible, the income derived from undertaking the chargeable functions covers the costs associated with providing them.</p> <p>The new arrangements must accord with the Building Safety Act and the introduction of the Building Safety Regulator’s powers.</p> <p>The parties will enter into a bespoke legal Agreement documenting terms, finance arrangements and exit provisions.</p>
<p>Risk Management:</p>	<p>There is a significant risk to the authority that it will not be complying with the requirements of the Building Safety Act if an agreement is not in place by April 2024. Post the Grenfell tragedy there has been a raft of new legislation and training /</p>

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	<p>competence requirements. The service has worked to meet these requirements by the deadline and will do so. There is also a legal requirement for registration of services and for that an agreement delegating this requirement will need to be in place by 1st April 2024.</p> <p>Risks exist around the service failing to generate sufficient income to cover the cost of the service. If this were to happen charges would need to be increased or costs reviewed to bring income and expenditure back in line with one another. This risk exists under the current arrangement and will be no different under the new one. This risk would apply to any arrangement, but the proposed shared service mitigates this risk as it is more efficient to run and the fees are therefore more competitive in the market.</p> <p>There are significant benefits in a wider client base for West Berkshire. Another aspect of this is the need to ‘grow the business’ and business development will be part of the annual business planning cycle. This however needs to be balanced with available resource for delivery and a robust training and development strategy.</p> <p>One of the most significant risks to the Service is around staffing and the ability to recruit to vacant posts in a market that competes with the private sector. It is anticipated that this risk would be exacerbated if the Council was to withdraw from the partnership in the current market potentially leaving West Berkshire unable to deliver a statutory service.</p>			
Property:	None associated with this proposal.			
Policy:	There are no policy changes associated with this decision.			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				

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A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?	x			Building Regulations address accessibility and the arrangement will enable the Council to deliver this service.
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?	x			Building Regulations require that public buildings incorporate measures to enable them to be accessible to some groups of people with protected characteristics and the arrangement will enable the Council to deliver this service.
Environmental Impact:	x			Continued ability of the service to secure national sustainability requirements on a cost neutral basis and the arrangement will enable the Council to deliver this service.
Health Impact:	x			Building Regulations address health and safety in the public interest. The arrangement will enable the Council to deliver this service
ICT Impact:		x		None specifically associated with this proposed decision.
Digital Services Impact:		x		None specifically associated with this proposed decision.
Council Strategy Priorities:		x		Ensure West Berkshire Council offers good customer service to our residents and businesses. Tackling the Climate and Ecological Emergency. Services We Are Proud of.
Core Business:		x		Business as Usual Activity.

Data Impact:		x		A Data Sharing agreement will be included as part of the shared service agreement.
Consultation and Engagement:	None			

4 Executive Summary

- 4.1 Building Control Solutions (BCS) was originally established in April 2015, as a two-way shared service between the Royal Borough of Windsor & Maidenhead (RBWM) and Wokingham Borough Council (WBC) to deliver the building control function across those two authorities.
- 4.2 In July 2016 West Berkshire District Council (WBDC) joined the shared service, under a new agreement. This resulted in an annual saving of £51,000 against the budgeted cost for the service. In September 2019, RBWM announced its intention to leave the shared service on the expiry of the original agreement. Since then, BCS has continued to operate the shared service (between WBC and WBDC) under interim arrangements, whilst officers investigated the options for moving forward. This included a full service review of all options.
- 4.3 Wokingham Borough Council are the host authority for the shared service and when West Berkshire Council joined the shared service, West Berkshire staff were transferred under the TUPE process to them.
- 4.4 A third Council approached the shared service in April 2022 with a request to consider joining the partnership. It was agreed by the three authorities' lead officers that it would be advantageous to undertake a peer review of both services with a view to considering available options.
- 4.5 LABC (Local Authority Building Control) the national body representing all local authority building control teams was requested to undertake a peer review of both the Building Control Solutions team and the options for a three authority service. Terms of Reference for the peer review were drawn up and agreed by all parties. The review has now been completed.
- 4.6 Following lengthy discussions between West Berkshire Council and Wokingham Borough Council, it has been proposed that a new shared service agreement be entered into under Section 101 of the Local Government Act 1972 and other relevant provisions for a period of five years commencing on 1st April 2024. The proposal is not to include the third-party Council into the shared agreement at the present time. Although options for expansion of the service will always be kept under review should they provide benefits for existing partners.
- 4.7 Reports recommending support for each of the partners to enter into a new agreement for continued delivery of a shared building control service are therefore being presented to the Executives of Wokingham Borough and West Berkshire Councils respectively, during March 2024.

5 Supporting Information

Background

- 5.1 Building Control Solutions (BCS) was established in April 2015, as a two-way shared service between Wokingham Borough Council (WBC) and the Royal Borough of Windsor & Maidenhead (RBWM). In July 2016 West Berkshire District Council (WBDC) joined the shared service. This resulted in an annual saving of £51,000 against the budgeted cost for the service. In September 2019, RBWM announced its intention to leave the shared service on the expiry of the original agreement. Since that time, BCS has continued to operate the shared service (between WBC and WBDC) under interim arrangements, whilst officers investigated options for moving forward.
- 5.2 The original agreement for the shared service was made under Section 101 of the Local Government Act 1972 and ran for a five-year period. Since then, the partners have worked together under interim arrangements. Wokingham Borough Council are the host authority for the shared service with staff having previously transferred under the TUPE process to them.
- 5.3 Whilst officers considered renewal of the agreement, a third Council approached the shared service in April 2022 with a request to consider joining the partnership. It was agreed by the three authorities' lead officers that it would be advantageous to undertake a peer review of both services with a view to considering available options.
- 5.4 LABC (Local Authority Building Control) the national body representing all local authority building control teams was engaged to undertake a peer review of both the Building Control Solutions team and the third-party team and consider a case for business change. Terms of Reference for the peer review were drawn up and agreed by all parties.
- 5.5 LABC completed this work and produced two reports on the existing BCS service and a case for business change. These have been presented to both authorities' lead officers for their consideration. Following lengthy discussions between the two partner authorities, it has been proposed that a new two authority shared service agreement be entered into under Section 101 of the Local Government Act 1972 and other relevant provisions for a period of five years with an option to renew for five years commencing on 1st April 2024.
- 5.6 There is an imperative to have the new agreement in place by the 01 April in order to comply with the requirements of the Building Safety Act. In addition, as of the 06th April 2024 all practising Building Control Surveyors have to become Registered Building Inspectors. Local Authorities as Building Control Authorities will need to ensure that they have adequate resources and the legal arrangements in place.
- 5.7 The Building Safety Regulator has written to LABC the national body for local authority building control regarding the position in respect of shared services and delivery models away from single services. The letter was received on the 08 February 2024 and as a result of the letter Officers are of the opinion that a new agreement under Section 101 of the LG Act 1972 would need to be in place for the Building Control Solutions team to operate across both Wokingham and West Berkshire. The new agreement would outline how the registration provisions would be managed.

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5.8 The Building Control service operates primarily within two main activity areas, trading, and non-trading:

- The trading activity is a statutory one assessing development proposals against the Building Regulations. All applications are subject to fees and charges, and the trading activity must be implemented on a legally self-financing basis. This element of the business currently accounts for about 83% of the total service output.
- The non-trading is also a statutory activity and relates to the application of the Building Act and includes work to make safe dangerous structures, the consideration of demolitions, Competent Person Schemes and Approved Inspector Registers along with other activities which are statutory but cannot be charged for which currently accounts for the other 17% of the service.

Business Case

5.9 The local authority building control service is in direct competition with private sector building control bodies (Approved Inspectors) offering similar services. Maintaining a sufficient market share to retain its self-financing status as well as the ongoing difficulty with the recruitment and retention of staff makes the operation of small, single authority team difficult. The primary benefit of a shared service is that it helps to safeguard the future resilience of the statutory service by maintaining the skill and capacity of the team to discharge all its statutory requirements. A larger team also has a stronger basis from which to maintain market share, in an increasingly competitive market.

5.10 The formation of the shared service in 2015 delivered savings to each partner authority in respect of management posts through the creation of one team with a single Building Control Manager post and a single Support Team Manager post. At the point at which West Berkshire Council entered into the agreement in 2016 the budget for the service was £131k and the outturn was £141k. The non-trading cost to the Council in 2024 would be £80k under this contract. The costs have remained at around this level for the past five years. The Council also receives a re-charge of £30k which covers its management costs and overheads.

5.11 In addition, there continues to be savings from efficiency within the surveying and support teams through economies of scale and efficiency delivered by flexibility within a larger team dealing with workload. This has been hindered by a difficult recruitment and retention market in recent years, but overall, the shared service remains cost-effective with some 83% of costs covered by commercial revenue earned from delivering commercial building control services. In addition, the shared service has managed to build up a small, ring-fenced reserve to help with business improvement and managing ongoing income fluctuation. The non-trading activities account for 17% and are apportioned appropriately to each Council based on workload. The benefits of the arrangements are equally shared in respect of service lead and support management costs.

5.12 The shared service since its inception in 2016 has regularly delivered a self-financing service on a consistent annual basis achieving small surpluses where possible. These surpluses have accumulated into a Building Control Reserve currently standing at £92k. In addition to this figure, it should also be acknowledged that the service has delivered a comprehensive Transformation Project including a new single IT system across the

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partnership along with its hardware at no-cost to the partner authorities. The cost of this project was also financed fully by the Building Control Reserve. The agreement will include a mechanism of disaggregating the reserve fund should the partnership be dissolved.

- 5.13 The BCS shared service has developed itself well into a single team since its inception and all staff operate flexibly across the two authority areas. The shared service also continues to operate a successful Quality Management System, which is externally audited to ISO:9001 standard every year.
- 5.14 The LABC service review concluded that the shared service was operating well and was well-regarded.
- 5.15 Since its inception, the shared service has implemented a commitment to continuous business improvement, has implemented a single IT system across the partnership allowing mobile working and continues to identify both business opportunities to maintain market share along with customer service improvements.
- 5.16 In its review findings, LABC reflected and commented “Mystery shopping exercises showed a good level of customer service across both the support and surveying teams. This is encouraging and will continue to be built up in response to the intensive competitive environment that the service operates within”.
- 5.17 Increased local competition for experienced building surveyors locally has unfortunately resulted in several experienced team members leaving the shared service for increased salary and benefits in the past few years as well as taking valuable business contacts with them. The LABC review acknowledged this however, despite the intense competition for skilled resource and the effects of the ‘cost of living’ crisis, the service has increased its market share from 48% to 52% during 2023 with an increased focus on marketing. It aims to maintain this success during 2024.
- 5.18 In recognition of the staff recruitment and retention difficulties, the service has maintained an ongoing commitment to ‘grow its own’ with a training commitment through apprenticeships, staff development and securing government funding for a Trainee Building Control Surveyor post. It is hoped that the shared service will secure the opportunity for a further trainee through government funding for 2024. This commitment will remain moving forward; along with the training commitment to maintain the Registered Building Inspector status for all our surveyors.
- 5.19 The strong effort made by the shared service to prepare for the incoming changes resulting from implementation of the Building Safety Act in April 2024 were also recognised by the LABC Review.
- 5.20 The success of the shared service in service delivery was similarly recognised by the LABC Review noting that “BCS is delivering a good service for the partner authorities, performing well compared to other local authority services, whilst its processes and procedures are good” and helpfully advising that some further work on branding may be advantageous and its governance and identity as a local authority service could be sharpened.

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5.21 In conclusion, the LABC team indicated their opinion that the shared service delivered by BCS was a top-quartile performing service nationally.

5.22 In this context, the LABC Review highlights a strong basis for continued delivery of the shared service.

5.23 Several of the recommendations and opportunities for improvement highlighted in the LABC review have already been implemented and addressed; whilst others will be addressed over the coming months once the long-term future of the service is secured through a new agreement.

5.24 Following the conclusion of the LABC peer review, the case for business change undertaken by LABC considered several aspects within its terms of reference: -

- Future operating models, including the continuation of the current shared service model under the Local Government Act 1972 or other models that may be appropriate and associated governance structures.
- Financial and operational viability of a three-way service with a third local authority.
- Branding and positioning.
- Recommendations on next steps

5.25 The case for business change identified several key findings: -

- The current governance model is considered acceptable, but the current arrangements need to be reinvigorated to ensure both parties feel fully invested in the partnership.
- It was not possible to provide an opinion on the financial viability of a three-way shared service due to a lack of financial data.
- While increasing the number of authorities included in the partnership would usually be considered a sensible approach, to increase capacity and resilience, the situation at the Council that approached the Service in terms of establishment staff means this would not currently be the case and the associated agency costs could adversely impact on financial viability of the existing shared service.
- Branding is not considered a significant issue; however, it is recommended that further work is done around clear messaging that BCS is a local authority building control partnership.
- The balance between commerciality and public protection should continue to be kept under review to ensure all parties involved in the partnership are happy with how the service positions itself.
- In the short term the costs to include a third-party in the partnership may well outweigh the benefits, however a future merger should not be dismissed. The door is not closed to extending the partnership and we continue to work with a potential partner whilst providing guidance and advice in conjunction with undertaking further work on extending the partnership.

- 5.26 The review endorsed the continuation of a shared Building Control Service. However, recognised that this should be amended so all parties were invested in the service. Discussions have continued with officers at Wokingham Borough Council over the last year and agreement has been reached in principle to maintain the existing partnership and it is proposed that a new shared service agreement be put in place from 1st April 2024 under Section 101 of the Local Government Act 1972 which would ensure that the service would continue to work equally for both partners in the public interest. However, in line with the review, it is not recommended that the third interested Berkshire Council join the arrangement at this time.
- 5.27 It is proposed that this period will be for a further five years with an opportunity for either partner to give adequate notice of no-fault termination of the agreement. This period will provide a secure future for the shared service and the ability to prepare a longer-term business plan. The proposed agreement will also allow for the possibility of a five-year extension period. A review would be undertaken before the initial agreement expired. This review would decide if the partnership was working well or whether it is best for WBDC to consider further options. Legal advisers Bevan Brittan have been engaged to develop the draft agreement on behalf of both authorities with input from both legal services teams. This work is continuing to take place to meet the 1st April deadline and the cost of this work will be met within the Building Control Reserve.
- 5.28 Significant changes come into effect from April 2024 with the implementation of the Building Safety Act and the introduction of the Building Safety Regulator's powers requiring all practising Building Control Surveyors to become Registered Building Inspectors. The implications of these changes require Building Control services operating as a shared service to formalise their arrangements through an agreement under the Local Government Act 1972 and other relevant provisions by 1st April 2024.
- 5.29 The key principles of the new agreement will be based upon the main principles in the original agreement, but noting the findings of the LABC Peer Review, will ensure:
- An improvement in governance and reporting to the two shared service partners monthly.
 - Clarity on the calculation of respective partner contributions to the non-trading account.
 - Clarity of partners' internal re-charging arrangements to the shared service budget.
 - Finance lead officer roles are designated within both partner authorities.

6 Other options considered

- 6.1 The Council has no other options to deliver the service outside of extending the current arrangement or bringing this back in house as a single West Berkshire Service.
- 6.2 Not to renew the shared arrangement. This is not the favoured approach as it would increase the management costs to both Councils and result in less resilient service than at present. It is highly likely that a single West Berkshire Council Building Control Service would be unable to attract staff and would be less able to offer the necessary training to grow our own surveyors and meet the requirement of the Building Safety Act.

There would also be potential costs resulting from separation of IT systems and resourcing implications for HR.

- 6.3 Extending the partnership to include the third local authority. This is not the recommended approach for the reasons set out above.

7 Conclusion

- 7.1 The entering into of a renewed five year shared service agreement (with the possibility of extension) with Wokingham Borough Council for the reasons set out in the report, and in the report produced by LABC, provides the best option for the future delivery of the Building Control functions for West Berkshire Council and its residents and businesses.
- 7.2 Once the agreement is in place, it is the intention of the service to fully consider any new business opportunities emanating from the changes brought in by the Building Safety Act. The Building Safety Regulator's view of the future role of Building Control is one of enforcement activity, which may limit opportunities to offer additional services, but this will be considered in due course.
- 7.3 The new arrangement will deliver improved governance and reporting to the two shared service partners monthly and the ability of both partners to become invested in the service in the public interest and financial oversight by both partner councils. It will be more cost effective than the delivery of a single West Berkshire Building Control Service and more resilient in attracting and developing staff. The Council has no other options to deliver the service outside of extending the current arrangement or bringing this back in house as a single West Berkshire Service.
- 7.4 Long-term service planning will focus on continuing to deliver an upturn in market share whilst also developing staffing skillsets to offer additional services to our customers where opportunity allows.
- 7.5 Wokingham Borough Council will be considering this proposal at their Executive meeting on the 14 March 2024.

8 Appendices

- 8.1 None

Background Papers:

[Executive Report 28 May 2016](#)

LABC Consultative Peer Review Report – October 2022 and LABC Business Case Change Report – April 2023

Subject to Call-In:

Yes: No:

The item is due to be referred to Council for final approval

Delays in implementation could have serious financial implications for the Council

Delays in implementation could compromise the Council's position

Considered or reviewed by Scrutiny Commission or associated Committees, Task Groups within preceding six months

Item is Urgent Key Decision

Report is to note only

Wards affected: All

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