

# **East Herts Council Non-Key Decision Report**

**Date: 3<sup>rd</sup> August 2022**

**Report by: Helen Standen**

**Report title: Change of delegated function for LA1**

**Ward(s) affected: N/A**

## **Summary**

Since the formation of the Hertfordshire Building Control partnership, statutory building control functions (LA1) have been delegated by all partners to Three Rivers District Council (TRDC). From 15th August 2022, TRDC will be withdrawing the signatory function and East Herts will take this function on until 31st March 2023 while agreement of a permanent solution across all partners is reached. As there needs to be continuity of this function for statutory reasons, the delegated function for LA1 needs to be agreed as a matter of urgency

## **RECOMMENDATIONS FOR DECISION:**

- a) To continue the appointment of Three Rivers District Council to perform the LA1 contract management function and the audit and issue of statutory notices as per the current arrangements.**
- b) To agree the appointment of East Hertfordshire District Council and give authority to its LA1 Director to perform the statutory notice LA1 function from 17 August 2022 until 31 March 2023.**
- c) To agree delegated authority to the Head of Legal and**

## **Democratic Services to enter into the requisite Deed of Variation and amended Inter Authority Agreement to implement the above changes.**

### **2.0 Background**

- 2.1 In 2016 East Hertfordshire District Council, along with six other local authorities (Broxbourne, Hertsmere, North Hertfordshire, Stevenage, Three Rivers and Welwyn Hatfield Councils), transferred its Building Control Service to Broste Rivers Limited, holding company of Hertfordshire Building Control Limited ("HBC") and The Building Control (Hertfordshire) Company Ltd. The council's statutory Building Control functions were delegated to one of the other authorities within the agreement ("LA1").
- 2.2 In 2019, a further local authority, Dacorum, was added to the agreement, bringing the total partner authorities to 8.
- 2.3 The role of LA1 is to act as the Delegated Authority and to issue certificates through a Contract Manager, audit HBC and monitor service levels. An annual support sum is paid to LA1 by all the building control authorities. Currently Three Rivers District Council is designated as LA1.
- 2.4 Building control services are contracted from the building control authorities to HBC through the Service Agreement, which had a term of five years from 17 August 2016. The term was extended for a further year through a deed of variation dated 9 February 2021. The extended term is due to end on 16 August 2022 and it is proposed that a further deed of variation is entered into

to extend the Service Agreement until a new contract is completed.

- 2.5 Under the current arrangements, all the building control authorities have delegated their statutory building control functions to Three Rivers District Council. However, as the current Service Agreement comes to an end, the long term future of this role is yet to be determined. Three Rivers District Council has offered to continue to deliver part of the LA1 functions, namely in relation to the contract management function and the audit and issue of statutory notices, but has requested that the function pertaining to signing the statutory notices be done by an authorised officer of the local authority to which the notice relates.
- 2.6 Since 2016, however, very few of the partner authorities have an officer with that skillset within their current staffing structure.
- 2.7 Alternatively, East Hertfordshire District Council has indicated our willingness to perform the statutory building control sign off functions on behalf of the other building control authorities until 31 March 2023, on the basis that a director with knowledge and expertise in the area of building control will be specifically employed (on a part time basis) to perform the role of LA1 Director, with the costs to be shared between HBC and the other building control authorities.

### **3.0 Options**

- 3.1 Three Rivers District Council has offered to continue to deliver part of the LA1 functions in relation to contract

management and the audit and issue of statutory notices, with each partner authority signing off its own statutory notices, however, this option is not recommended because it is a more complex process than is necessary and there would be a separation from the audit and signatory process, without the appropriate expertise within each authority to provide the assurance oversight function.

## **4.0 Risks**

- 4.1 Should no action be taken, the current Service Agreement with HBC will expire on 16th August 2022 which would result in the Council having to take back in-house building control functions. There are currently no staff members who could provide this service in-house so a new team would need to be developed and recruited to which is likely to be a difficult and lengthy process in the current recruitment market and, as a result, Building Control Services would be detrimentally affected.

## **5.0 Implications/Consultations**

- 5.1 All partner local authorities have been consulted and will be undertaking similar delegated authority in respect of the statutory functions.

### **Community Safety**

No

### **Data Protection**

No

## Equalities

No

## Environmental Sustainability

No

## Financial

Yes.

Under this arrangement EHDC will be paid a support payment and will be liable for a contribution as outlined below:

Preparation work	DBC	Legal, HR and PM support	£5,000
Host Authority support	EHDC	8 months at £1k per month	£8,000
Induction	Surveyor	4 days at £600 / day	£2,400
Service Delivery	Surveyor	1 day per week at £600 / day for 35 weeks	£21,000
			<hr/>
			£36,400
			<hr/>
50% of cost payable by Herts Building Control			£18,200
Amount remaining to be paid by partners			£18,200
Based on 8 authorities signing up			£2,275 each
Based on 7 authorities signing up			£2,600 each
Based on 6 authorities signing up			£3,033 each

On the basis that all eight authorities agree to the new arrangement, the cost to EHC will be £2,275, however there will also be an income to the council for hosting the function of £8,000. This is considered to deliver good value to ensure the continued delivery of this statutory service.

## Health and Safety

No

## **Human Resources**

No

## **Human Rights**

No

## **Legal**

Yes.

If the extension to the current agreement is not concluded and a further agreement entered into, then the operational requirement to provide Local Authority Building Control services in the District will revert back to the council as it is a statutory requirement. The council no longer employs any Building Control professionals, no administration staff to support this service and therefore currently has no capacity. It would have to rely on expensive agency staff adding costs to the council. Furthermore as Building Control is a competitive service, it would have to build up new business from a very low customer base with a large risk of under achievement of income necessary to support the service.

Pursuant to section 101 of the Local Government act 1972, any function of a local authority may be delegated to another local authority. Building control is a statutory function within which certain functions cannot be delegated to any external body (other than another local authority) even if the body itself is wholly owned by other local authorities.

This proposal to appoint East Hertfordshire District Council to perform the statutory notice LA1 function on behalf of partner organisations would ensure that decision notices are authorised by a competent officer who possesses the relevant expertise. The alternative option to bring the function back in house would give rise to significant financial, legal and risk implications along with disruption to services.

**Specific Wards**

No

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As Above