

East Herts Council Non-Key Decision Report

Date: 15/02/2023

Report by: Cllr Jan Goodeve

Report title: Statutory Function provision and contract renewal with Hertfordshire Building Control Limited

Ward(s) affected: N/A

Summary

- To seek approval for the council's shareholder representative to vote in favour of the proposed provision of statutory functions (Proper officer) and to agree a new rolling contract term

RECOMMENDATIONS FOR DECISION: That:

Approval is given to the council's shareholder representative to vote in favour of:

- a) Agreeing the option of 'Proper Officer' function via the 'secondment' proposal**
- b) Agreeing to a new rolling contract term with Hertfordshire Building Control Ltd to provide Building Control functions on behalf of East Herts Council**

1.0 Proposal(s)

- 1.1 To agree to the option of provision of 'Proper Officer' statutory function as described in the options appraisal.
- 1.2 To agree to extending the contract with Hertfordshire Building Control Ltd to provide Building Control functions on behalf of the eight partner authorities on a rolling basis (Current contract expiration end of March 2023)

2.0 Background

- 2.1 In 2016 the council joined together with 6 other Hertfordshire local authorities to form Hertfordshire Building Control Company, a Teckal company wholly owned by the seven authorities in equal shares. In 2019 Dacorum Borough Council joined as the eighth full shareholder. Until August 2022, the statutory functions were undertaken by Three Rivers District Council (TRDC), under the umbrella of LA1. Following notice from TRDC to cease the arrangement, East Herts Council agreed to temporarily host the LA1 statutory function whilst an alternative permanent solution was agreed.
- 2.2 Legal advice was commissioned and a number of proposals were evaluated independently. Following significant scrutiny, the Board and Shareholders agreed that the most favourable option was to implement the secondment model. Full details of the analysis undertaken can be found at Appendix A.
- 2.3 Under the Inter Authority Agreement (IAA), the local authorities delegated the performance of the "Delegated Functions" to 'LA1'. The "Delegated Functions" are defined in the IAA as the functions and related matters and activities set out at Schedule 1 paragraphs 1.1.1 and 1.1.2 of the SLA. These include the non-delegable functions.
- 2.4 The Secondment Option would entail a formal "secondment" of named Hertfordshire Building Control Ltd (HBC) employees to each local authority through secondment agreements. The secondment arrangements would be limited to the discharge of the non-delegable functions. These agreements would involve a nominal fee (e.g. £1) and importantly, provide indemnities to those seconded HBC employees to place them in the same position in which an employed officer of one of the local authorities would be in when discharging their responsibilities.
- 2.5 This option would require a move away from appointing one of the local authorities as LA1 (which is summarised in

paragraph 4 below). Instead, each local authority will appoint named persons (who will happen to be employees of HBC) to discharge the non-delegable functions, which they will do in the name of the relevant local authority.

2.6 This will require each authority to enter into a secondment agreement with each named person and HBC. The secondment agreement will record the appointment of those persons as "proper officers" and provide them with the type of indemnity which an employed officer of the local authority would expect to benefit from in the discharge of their public duties. Furthermore, there will be a nominal payment to ensure the arrangement is enforceable.

2.7 The other actions which will be required in order to adopt this option will include:

2.7.1 A decision from / report to each local authority (in line with each local authority's constitution and standing orders) to:

- (a) cancel the delegations to LA1; and
- (b) appoint the named persons as "proper officers" in respect of the non-delegable functions;

2.7.2 Amendments to the existing Service Level Agreement (SLA) and Inter-Authority Agreement (IAA) to reflect this change.

2.8 It is recommended that there are a minimum of 2 named officers per local authority partner to ensure continuity of cover during unplanned absences etc.

3.0 Reason

3.1 Each local authority must provide statutory functions in respect of Building Control.

3.2 The secondment option will provide clarity of provision of the functions and ensure both the local authorities and named HBC surveyors are protected and able to perform the necessary services.

4.0 Options

- 4.1 The five options considered are:
- Each authority employees their own 'proper officer'
 - A single 'proper officer' employed by all authorities
 - Retain the current LA1 model
 - Secondment model
 - Hybrid of LA1 and the secondment model

The pro's and con's of each option can be found at Appendix B, to be considered in conjunction with the full evaluation report at Appendix A

5.0 Risks

5.1 Risks are covered in full at Appendix B, but for ease of reference the 'Secondment' model provides the greatest resilience and continuity as well as assurance by way of competency

5.2 Failure to provide the 'proper officer' function would result in all partner authorities failing in meeting their statutory functions in relation to Building Control

6.0 Implications/Consultations

6.1 All 8 shareholders are being recommended by the Board of Broste Rivers Limited to approve the 'secondment option' and extension to the current contract on a rolling basis.

Community Safety

N/A

Data Protection

All company data is properly and securely held. GDPR regulations are adhered to at all times

Equalities

N/A

Environmental Sustainability

N/A

Financial

No risk

Health and Safety

Health and Safety matters are reported to the HBC Board monthly

Human Resources

There is an existing member of staff to whom TUPE is likely to apply. This is currently being worked through by the host council

Human Rights

N/A

Legal

Legal colleagues have been consulted and have been asked to sign off a duty of care letter

Specific Wards

N/A

7.0 Background papers, appendices and other relevant material

Appendix A – Legal Opinion

Appendix B – Options paper

Contact Member

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