

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

PART 1 – PUBLIC DOCUMENT

SERVICE DIRECTORATE: Regulatory

1. DECISION TAKEN

1.0 To extend the current Services Agreement with Hertfordshire Building Control until 31st March 2023.

1.1 That the Building Control Statutory 'LA1' Functions be delegated to Three Rivers District Council and East Hertfordshire District Council until 31st March 2023

2. DECISION TAKER

Cllr Elizabeth Dennis-Harburg: Leader and Ian Fullstone: Service Director - Regulatory

3. DATE DECISION TAKEN:

21st July 2022

4. REASON FOR DECISION

4.1 To ensure the continued delivery of building control services within North Hertfordshire.

5 ALTERNATIVE OPTIONS CONSIDERED

5.1 Three Rivers District Council has offered to continue to deliver all the 'LA1' functions in relation to contract management function and the audit and issue of statutory notices, with each partner authority signing off its own statutory notices, however, this option is not recommended or preferred by the other seven local authorities because it is a more complex process than is considered necessary. There would be a separation from the audit and signatory process, without the appropriate expertise. being in place within each authority to provide the assurance oversight function.

5.2 Should no action be taken, the current Services Agreement with Hertfordshire Building Control Limited (HBC) will expire on 16th August 2022 which would result in the Council taking back in-house all 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 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.

6 CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 6.1 The Executive Member and Deputy Executive Member for Planning and Transport have been briefed on the contents of this report. There also been extensive discussion with partner authorities who have agreed to the approach set out in this report. The Chair of the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) has also been briefed.

7 FORWARD PLAN

- 7.1 This decision is not a key Executive decision and has therefore not been referred to in the Forward Plan.

8 BACKGROUND

- 8.1 Broste Rivers Limited, holding company of Hertfordshire Building Control Limited ("HBC") and The Building Control (Hertfordshire) Company Ltd was established in 2016. When this was set up there were seven original shareholders, which included North Hertfordshire, Broxbourne, East Hertfordshire, Hertsmere, Stevenage, Three Rivers and Welwyn Hatfield Councils. In September 2019 Dacorum Borough Council became the 8th shareholder.
- 8.2 Cabinet resolved on 21st November 2017 (item 60, resolution (2)) *that the Building Control Statutory Delegated Functions be delegated to LA1 (in the first instance, to be Three Rivers District Council)*. The resolution identifies that the authority acting as LA1 will likely change using 'in the first instance'. The role of 'LA1' is to act as the Delegated Authority on behalf of the other local authority partners and to issue certificates and notices on their behalf through a Contract Manager, to audit HBC and monitor service levels. An annual support sum is paid to LA1 by all the building control authorities. Currently LA1 is still designated as Three Rivers Council.

9 RELEVANT CONSIDERATIONS

- 9.1 Building control services are contracted from the eight building control authorities to HBC through the Services 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 Services Agreement until a new contract is completed.
- 9.2 Under the current arrangements, all the eight building control authorities have delegated their statutory building control functions to Three Rivers Council (LA1). However, as the current Services Agreement comes to an end, the future of this role is yet to be determined. As per paragraph 5.1 above, Three Rivers District Council has offered to continue to deliver the LA1 functions in relation to contract management function and the audit and issue of statutory notices but has requested that the statutory notices are signed by the authorised officer of the local authority to which the notice relates. This is not the preferred option of the other seven partner authorities.
- 9.3 East Hertfordshire District Council has come forward and offered to accept a delegation to perform the statutory building control sign off functions on behalf of the other building control authorities until 31st March 2023, on the basis that an officer with knowledge and

expertise in the area of building control will be specifically employed to perform the role of LA1 Director and the costs are to be shared between the building control authorities.

- 9.4 Consideration for the delivery of the LA1 function beyond 31st March 2023 will be assessed by the partner authorities and it may be a role that North Herts Council offers to perform in the future.

10 LEGAL IMPLICATIONS

- 10.1 As stated within the 21st November 2017 report to Cabinet, external expert legal advice has been obtained and only the Executive can delegate these Building Control functions to another authority under 5(2)(a) of the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012.
- 10.2 Section 5.7 (Delegation of Functions) of the Council's Constitution states that The Leader may exercise Executive Functions.
- 10.3 Section 14.6.10 (b) (i) of the Councils Constitution delegates authority to the Service Director (except those reserved to Council, Cabinet or a Committee) in relation to Building Control including client-side Building Control company operational matters as required under any agreements, in addition to all activities relating to discharge of the Council's function as the Local Building Regulation Authority.
- 10.4 Section 14.6.4 (a) (General Authorisations) delegates Service Directors at (ii) to enter into contracts to carry out works and/or for the supply of goods and services within approved budgets.

11 FINANCIAL IMPLICATIONS

- 11.1 Currently the Annual Support charge that the Council pays to Three Rivers Council is forecast at circa £12.5K for 2022/23. It is anticipated that the cost to perform the role of LA1 will increase, as a part-time LA1 Director will be employed by East Hertfordshire Council specifically to perform the role of LA1 Contract Manager. The costs relating to this role and implementation costs will be shared equally by the eight building control authorities and are projected to be circa £3,500 per authority to the end of March 2023. This additional cost can be met within existing budgets.

12 RISK IMPLICATIONS

- 12.1 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 North Hertfordshire will revert back to North Herts 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 businesses from customer from a very low customer base with a large risk of under achievement of income necessary to support the service.

13 EQUALITIES IMPLICATIONS

13.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

13.2 There are no direct equality implications to this decision to extent the contract.

14 SOCIAL VALUE IMPLICATIONS

14.1 The Social Value Act and “go local” requirements do not apply to this report.

15 ENVIRONMENTAL IMPLICATIONS

15.1 There are no known Environmental impacts or requirements that apply directly to this report. The Council will conduct environmental impact assessments where required (i.e any key decisions, major budget implications and any revisions to major service provisions).

16 HUMAN RESOURCE IMPLICATIONS

16.1 There are no human resources implications arising directly from this report.

17 BACKGROUND PAPERS

17.1 [Agenda for Cabinet on Tuesday, 21st November, 2017, 7.30 pm | North Herts Council \(north-herts.gov.uk\)](http://north-herts.gov.uk)

18 APPENDICES

18.1 None

NOTIFICATION DATE

22nd July 2022

Signature of Executive Members Consulted

Cllr Ruth Brown  Date 22nd July 2022

Signature of Decision Takers

Cllr Elizabeth Dennis-Harburg, Leader



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Ian Fullstone, Service Director – Regulatory



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Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.

Call-in does not apply to NON-EXECUTIVE DECISIONS