

<b>Title of Report</b>	<b>BUILDING CONTROL - PROPOSAL FOR FUTURE SERVICE DELIVERY</b>	
<b>Presented by</b>	Councillor Robert Ashman Planning and Infrastructure Portfolio Holder	
<b>Background Papers</b>	<b>None</b>	<b>Public Report:</b> Yes
		<b>Key Decision:</b> Yes
<b>Financial Implications</b>	The detailed financial implications are contained in the body of the report.	
	<b>Signed off by the Section 151 Officer:</b> Yes	
<b>Legal Implications</b>	The detailed legal implications are contained in the body of the report. The building control service is an executive function and the decision to delegate the function to another council rests with Cabinet.	
	<b>Signed off by the Deputy Monitoring Officer:</b> Yes	
<b>Staffing and Corporate Implications</b>	Any implications on staff will be managed through our existing policies with staff and trade union consultation and engagement. Decisions regarding the structure and size of the establishment rest with the Head of Paid Service who has been consulted on these proposals.	
	<b>Signed off by the Head of Paid Service:</b> Yes	
<b>Purpose of Report</b>	To update members on the progress of the future delivery of the Councils Building Control service	
<b>Reason for Decision</b>	To seek Cabinet approval for the delivery of the Councils Building Control function to be transferred to Charnwood Borough Council.	
<b>Recommendations</b>	<p><b>THAT CABINET:</b></p> <ol style="list-style-type: none"> <li><b>1. NOTE THE WORK WHICH HAS BEEN DONE ON THE BUILDING CONTROL PROJECT WITH CHARNWOOD BOROUGH COUNCIL TO DATE AND THE COMMENTS FROM THE COMMUNITY SCRUTINY COMMITTEE ON 28 OCTOBER 2020</b></li> <li><b>2. AGREE THAT THE DELIVERY OF THE BUILDING CONTROL FUNCTION BE TRANSFERRED TO CHARNWOOD BOROUGH COUNCIL;</b></li> </ol>	

	<p><b>3. AGREE THAT, UNDER SECTION 101 OF THE LOCAL GOVERNMENT ACT 1972, SECTIONS 19 AND 9EA OF THE LOCAL GOVERNMENT ACT 2000 AND REGULATION 5(2)(A) OF THE LOCAL AUTHORITIES (ARRANGEMENTS FOR THE DISCHARGE OF FUNCTIONS) (ENGLAND) REGULATIONS 2012 THAT THE DELEGATED AUTHORITY BE GRANTED TO CHARNWOOD BOROUGH COUNCIL TO DELIVER BUILDING CONTROL SERVICES ON BEHALF OF NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL AND IN ACCORDANCE WITH THE TERMS OF A DELEGATION AGREEMENT WHICH IS TO BE AGREED BY BOTH AUTHORITIES;</b></p> <p><b>4. GRANT DELEGATED AUTHORITY TO THE STRATEGIC DIRECTOR OF PLACE, TO NEGOTIATE AND FINALISE THE TERMS OF DELEGATION AGREEMENT WITH CHARNWOOD BOROUGH COUNCIL</b></p> <p><b>5. NOTE THAT THE HEAD OF PAID SERVICE HAS, IN ACCORDANCE WITH POWERS VESTED IN HER AT PARAGRAPH 4.1.1 (a) OF THE SCHEME OF DELEGATION WITHIN THE CONSTITUTION AND SUBJECT TO CABINET APPROVAL OF THE DELEGATION OF THE FUNCTION, MADE A DECISION TO TRANSFER STAFF TO CHARNWOOD BOROUGH COUNCIL IN ACCORDANCE WITH THE PROVISIONS OF THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TUPE) REGULATIONS.</b></p>
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## **1.0 BACKGROUND**

- 1.1 For some years now, the local Authority Building Control sector has been facing significant challenges from increased competition from private sector 'Approved Inspectors'; declining local government finances; increased costs; small geographical areas (compared to an Approved Inspector), significant pay and benefits disparity with Approved Inspectors; an aging workforce; and a shortfall of new graduate entrants into the profession.
- 1.2 In early 2018, Hinckley and Bosworth Borough Council, North West Leicestershire District Council and Charnwood Borough Council came together to redefine how building control services could be provided across their administrative areas. The Building Control Alternative Service Delivery Joint Project Board was subsequently established in March 2018, formed of Strategic Directors from the partner authorities and later on, a legal representative from North West Leicestershire District Council.
- 1.3. The project objectives agreed by the Project Board were to:
- Improve business resilience in light of external competition
  - Provide a competitive career and pay structure to attract and retain suitably skilled staff
  - Improve the financial viability of the Building Regulation fee earning work

- Make more effective use of staff skills to the benefit of partners
  - Have more effective training and at reduced cost
  - A scalable and adaptable structure to enable wider joint working in future
  - Reduce costs to the general fund of partners
  - Provide a consistent service over the administrative area in scope
  - Share investment in operational costs
  - Increase market share and develop a competitive service which will be fit for purpose
- 1.4. Guided by the Joint Project Board, the Project Team considered a range of service delivery models and then tested them against the agreed project objectives. The models assessed were:
- Do nothing – maintain existing service delivery arrangements
  - Outsource to an outside supplier
  - Public sector mutual – Service owned and delivered by the staff
  - Shared Service
  - Local Authority Trading Company
  - Join other partnerships
- 1.5. In April 2019, Hinckley and Bosworth Borough Council left the partnership in favour of an arrangement with Blaby District Council linked to other business relationships between the two councils. The outline business case was therefore revised to take account of the new position along with new evidence on finance and TUPE as well as the implications of Brexit. In light of this new information Board agreed a revised programme in May 2019 to move straight to a local authority trading company and work commenced work on a full business case.
- 1.6. The draft business case for a trading company was reported to Board in September 2019. However, Board considered that this option was not capable of being recommended to members, as the business development necessary to cover costs in the current and forecast market conditions were too great a risk for partners. Board asked for the full business case to be refined and then finalised to demonstrate that the option had been thoroughly tested. The final version of the full business case was signed off by the Project Board in March 2020.
- 1.7. The Project Board agreed to explore other options for partnership working to maintain the effective delivery of the service. This included extending an existing Section 113 agreement which was already in place with Charnwood Borough Council. This is a legal agreement made under Section 113 of the Local Government Act 1972 which enables councils to place their officers at the disposal of the other. Under these arrangements staff remain employed by their “home” council and undertake roles/deliver services, for an agreed cost, as if they were part of the recipient council. A S113 agreement was already in existence between the Council and Charnwood Borough Council for the provision of ad hoc support and resilience to the Councils Building Control service. Changes in the staffing levels at the Council due to staff leaving and difficulty in recruitment to qualified Inspector posts meant that a S113 agreement was no longer a suitable model.
- 1.8. The Council is keen to continue to work in partnership and ensure the delivery of the service to a high standard across both councils. As such the Project Board have explored the option of delegating the service to Charnwood Borough Council to deliver on behalf of North West Leicestershire District Council and it is this option which is before Scrutiny for consideration and comment.

## **2. PROPOSAL FOR BUILDING CONTROL SERVICE DELIVERY**

- 2.1 It is proposed that the responsibility for the Building Control service be delegated to Charnwood Borough Council to deliver building control services on behalf of North West Leicestershire District Council and in accordance with the terms of a Delegation Agreement which is to be agreed by both Authorities.
- 2.2 In order that the Council ensures it can remain competitive and build a market share and have a resilient quality service it is important that we have sufficient capacity and resource, which would be afforded with a larger service across Charnwood and NWL. This will increase our ability to market and grow the services and ensure that in future we are best able to maximise the benefits of a larger building control offer potentially across Leicestershire. It is considered that the model proposed is the best way of doing this.
- 2.3 Whilst the model of service delivery recommended is delegated responsibility it is important to note that the approach fits into the wider aims of building a shared service programme with Charnwood Borough Council recognising the shared economic geography and the need to drive efficiencies and increase resilience within local government.
- 2.4 As a result of the delegation agreement, Charnwood Borough Council will provide an at-cost Building Control service under the Building Act 1984, Building Regulations 2010, Building (Local Authority Charges) Regulations 2010, any other relevant contemporaneous legislation, and any changes to relevant legislation (e.g. Building Safety Bill) for North West Leicestershire District Council from 4 January 2021.
- 2.5 Heads of terms have been drafted and are subject to continuing discussions between the Council and Charnwood Borough Council. Section 5 below sets out the legal and governance implications.
- 2.6 The heads of terms require that a Building Control Management Board, with officers from both Councils, will meet to manage the delivery and future development of the Building Control function that has been delegated to Charnwood Borough Council. The purpose of the Management Board is to ensure that the Building Control service meets its obligations in the delegation agreement and where necessary, determine any future involvement of the Council and Charnwood Borough Council in further developing the delegated Building Control function, e.g. creation of a local authority trading company.
- 2.7 Interim arrangements will be put in place when the Councils Building Control Manager leaves on 25 October until 4 January 2021 by way of a variation of the existing S113 legal agreement, which has been drafted by the Councils Legal Team. This will ensure that Charnwood Borough Council provide support to keep the Councils Building Control service operating during this interim period.

### **3. STAFFING IMPLICATIONS**

- 3.1 It is proposed that the Council will transfer all Building Control staff to Charnwood Borough Council. Due to current vacancies, this means that TUPE type transfer will only affect the Building Control Support Officer post (1FTE – 2 People). It is further proposed that some internal reorganisation take place to enable the Land Charges Function, which is currently located within the Building Control service, to be retained by the Council in the Planning and Infrastructure service. These matters will be dealt with in line with the Councils usual HR process. It is worth noting the role of the Head of Paid Service in making decisions regarding the size and configuration of the Council's establishment detailed at Section 5 below.

### **4. FINANCIAL IMPLICATIONS**

- 4.1 Building control consists of two accounts – fee earning and non-fee earning. The fee earning account is ring-fenced and all expenditure is covered by building control fee income. There is a statutory requirement to balance the income and expenditure for this account by taking “one year with the next. The non-fee earning account is a cost to the general fund less any non-fee earning building control fee income received.
- 4.2. Under the agreement proposed, Charnwood Borough Council will manage the fee earning account on our behalf, they will retain all building control fee income and we would expect the account to break-even in accordance with the statutory requirement (see para 4.1 above), and any good practice in terms of the length of time required to recover a deficit. Charnwood Borough Council will be responsible for setting the building control fees. Therefore, there will be no charge to the council for expenditure incurred in relation to the fee earning account after the initial implementation period (see para 4.4 and 4.5 below). The Council will not subsidise any deficits on the fee earning account.
- 4.3 For the non-fee earning (NFE) account, it has been agreed with CBC that for:
- 2020/21, the remaining budget for the year will be transferred to CBC;
  - 2021/22, the budget has been set at £147,810, this is comparable with the current year budget and the indicative budget for 2021/22;
  - 2022/23 onwards, CBC will set the budget, which will be approved by the Management Board with reference to actual costs of providing the service and the historic position.

CBC will be paid quarterly in advance and they will provide a quarterly reconciliation of all income and expenditure that has been charged to the NFE account. The Council will be liable for any additional expenditure, however this is no different to providing the service in-house. Any savings will be passed back to the Council.

- 4.4 There will be some cost to the Council of delegating the Building Control function to Charnwood Borough Council (CBC). Due to the current vacancies within the Councils team being filled by agency workers, it has been agreed that these will transfer to CBC and the council will fund the additional salary costs of the two agency posts for a period of up to 6 months, and then 50% of the additional salary costs for up to 12 months from the date of commencement, in order to allow CBC time to implement their new team structure. It is estimated that this will cost in the region of £42,000.
- 4.5 In addition, the following start-up costs have also been identified by Charnwood Borough Council and agreed by the Council.

Item	Costs	ask of NWL
Recruitment	£2500 x 3 BC inspectors	£7,500
Training for new team from LABC	£2,700 for whole team	£1,350
Refresh of both websites	£4,000-£8,000 for both LAS	£4,000
Marketing	£3,000	£1,500
Case management/time recording system	£2,000-£6,000	£6,000
Total		£20,350

The overall cost to the Council is estimated to be £62,350 based on the agency and start-up costs.

- 4.6 It has been agreed that exceptional costs on the statutory NFE account, for example should there be an event like the Birstall gas explosion, will be billed on a time costs basis as part of the annual reconciliation. In addition, any “internal consultancy work” for Council projects will also be billed on a time cost basis following a specification/estimate process. There is no additional cost to the Council as these are costs that would be accrued if the service remained with North West Leicestershire.
- 4.7 Given that the Council do not currently have any Building Control officers following the resignation of the Building Control Manager, there would still be a need to pay for continued agency staff, recruitment, training, web site and marketing if the service was not delegated to Charnwood Borough Council. Therefore, it is considered that the costs to the Council outlined above are outweighed by the need to provide resilience to the service in light of the current circumstances and the original objectives of the Project Board outlined in paragraph 1.3 above.
- 4.8 The nature of the work of building control means that customers pay fees for jobs which require a number of applications, inspections or interventions by the building control inspector. The process from the start of a building control application to completion can take time, often some years. The customer will pay the building application fee up front for the whole job. This means that there are jobs “in the system” which have been paid for and may have not been started or are part complete. Post delegation, CBC will be required to pick up and complete those jobs (and will incur costs as a result) but NWL will have received the full fee for the work. Work is underway to establish the number and value of these cases and agree the financial implications with CBC. As the fee earning account income and expenditure is accounted for separately and kept in a separate reserve, there will be no impact on the general fund balances and any deficit will need to be recovered in future years, as CBC manage the Fee earning account on the Councils behalf, in line with CIPFA Local Authority Building Control Accounting Guidance for England and Wales (2010)
- 4.9 Finally, there will remain £35,800 (based on 2021/22 budget) of corporate recharge costs that have previously been recharged internally from corporate services to the Building Control team. Members will recall that when outsourcing its leisure centres, the Council targeted to achieve 50% savings of the £400k of central recharges that would need to be absorbed when outsourcing. Given the relatively low value and the complexities involved in making corporate savings across all areas at this low value, a savings target will not be worked towards within corporate services at this time.

Instead, through the Council's Journey to Self Sufficiency Programme, monitoring of the corporate centre costs will be undertaken regularly and where a number of establishment changes have been undertaken, savings targets will be developed and worked towards.

## **5. LEGAL IMPLICATIONS**

### **Building control function – governance**

- 5.1 The building control function is an executive function. This means that a decision to delegate the function to another local authority must be made by Cabinet. It is not delegated to officers under NWL constitution. The enabling authority for the delegation of a function is [Regulation 5\(2\)\(a\) of the Local Authorities \(Arrangements for the Discharge of Functions\) \(England\) Regulations 2012](#) and Section 101 of the Local Government Act 1972 and Sections 19 and 9EA of the Local Government Act 2000.
- 5.2 The decision and the relationship between NWL and Charnwood Borough Council will be captured in a Delegation Agreement. Work has begun on developing the Heads of Terms for the Delegation Agreement and these are currently the subject of negotiation with Charnwood Borough Council. Given the recent changes in the service, it was considered prudent to undertake this work concurrently with the usual HR process to ensure a decision could be made in a timely manner.
- 5.3 Broadly, the Delegation Agreement will cover:
- The term of the delegation – 5 years and 3 months (from 4.1.21)
  - The resources being transferred in terms of budget and staff
  - The practical operation of the fee earning and non-fee earning accounts/work
  - The costs to be paid by NWL
  - Arrangements for the verification and invoicing for non-fee earning work
  - TUPE implications on delegating the function and should the delegation be rescinded
  - Terms of reference of an officer management board which will monitoring finance, performance and the business plan for the service,
  - KPIs
  - Indemnities, dispute resolution and termination/exit provisions.
- 5.4 Cabinet will consider the final heads of terms. If the delegation is agreed by Cabinet by virtue of the legal agreement entered into, the council does retain “ownership” of the responsibility for the building control function, having been given it by statute.
- 5.5 Legal advice has been sought on the consequential changes which will need to be made to reflect the fact that Cabinet has made a decision to delegate the function. The Head of Legal and Commercial Services has the delegated power to make changes to the constitution which are necessary as a result of fact and law. The proposed changes which would be required a result of Cabinet making the decision at their meeting on 10 November are attached at Appendix A.

### **Staffing/establishment matters – governance**

- 5.6 All matters related to staffing and proposed changes to the establishment are within the remit and delegation to the Chief Executive (CX) as Head of Paid Service in

NWL's constitution. The CX can make the decisions which are required in relation to staffing matters which are necessary to effect the decision of Cabinet.

5.7 Section 4 of the [Local Government and Housing Act 1989](#) provides for the Head of Paid Service to report its proposals to Council, where they consider it appropriate to do so relating to:

- a) the manner in which the discharge by the authority of their different functions is co-ordinated;
- b) the number and grades of staff required by the authority for the discharge of their functions;
- c) the organisation of the authority's staff; and
- d) the appointment and proper management of the authority's staff.

5.8 The CX has been consulted on this proposal and does not consider that the duty under S4 is engaged. This is due to the scale of the service, its budgets and number of staff affected by the proposal.

#### **Legal advice to the building control project**

5.9 Legal advice has been provided to both councils by the NWL in house team throughout this project. The advice has, to date, focused on advice on the legal structures available, governance and vires. The Head of Legal and Commercial Services has advised Charnwood Borough Council that they will need to have independent advice on the Delegation agreement and governance route at Charnwood Borough Council. This has been agreed by Charnwood Borough Council and they have put arrangements in place.

5.10 Legal advice will continue to be provided to NWL by the Head of Legal and Commercial Services and the Commercial Solicitor for the most part. External legal support has been sourced to support the drafting of the Delegation Agreement.

## **6 RISKS**

6.1 The relationship between the senior leadership for Charnwood Borough Council and North West Leicestershire District Council is effective and strong and will be important in ensuring shared communication and monitoring of any service. The Council have a good track record through the Audit service which we provide on a similar basis to Charnwood Borough Council and this service will provide an opportunity to build on a wider programme of sharing. Risks are more effectively managed in a constructive strong partnership.

6.2 There are some risks to the fee earning work due to the change in arrangements resulting from the potential loss of key clients the Councils Building Control manager has built good working relationships with. However, the mitigations for this are effective handover with those key clients with Charnwood Borough Councils Building Control Team Leader before the Councils Building Control Manager leaves, and a clear marketing and communications plan to be developed by Charnwood Borough Council.

6.3 Financially, Charnwood Borough Council would be responsible for keeping the FE account in balance taking one year with the next and to manage the resources

accordingly. Any risk to the Council might be around the return of the delegation at the end of the 5 years or before, for instance if the function comes back with deficit. However, any such risks should be picked up by the Building Control Management Board who will meet annually and KPIs

- 6.4 In relation to the NFE account, there is some risk to the general fund of increase in costs. However, this should be mitigated by a clear contract, the annual Building Control Management Board, KPIs, and by Charnwood Borough Council being required to time record and bill, which will be reviewed by the Council before the invoice is paid.
- 6.5 There could potentially be risks around return of service at end of contract or before. In terms of mitigation, there will be a 9 month notice period, and a requirement to agree a means of apportioning any surplus or deficit relating to the fee earning account. In addition, TUPE would apply in reverse with a reciprocal indemnity clause.
- 6.6 There is a risk that increased capacity, and changes to Building Regulation legislation will increase non-fee earning costs. This is because non-fee earning work includes enforcement, investigation of unauthorised work, the giving of advice in response to general enquiries, competent person scheme notification registration, and the registration of Initial Notices, etc.
- 6.7 In terms of any reputational damage resulting from the delegation of the Building Control function, this would be largely mitigated by having clear heads of terms, a contract (delegation agreement), and the Building Control Management Board, with officers from both Councils, will meet to manage the delivery and future development of the Building Control function. With these measures in place, officers are satisfied that risks can be mitigated and managed effectively.
- 6.8 Performance of the delegated function will be managed through KPI's which will be assessed on a quarterly basis by the sub-group of the Building Control Board and annually by the Building Control Board.

## **7. COMMUNICATIONS**

- 7.1 Affected staff members are already being engaged with and kept informed and this will continue throughout the process. Members will also be kept up to date through members bulletins and chief executive updates.
- 7.2 Charnwood Borough Council's communications team are leading on a marketing and communications plan, supported by the Councils communications team. This is currently being drafted and takes into consideration the wider communications required for customers and residents in both districts.
- 7.3 Both Charnwood Borough Council and the Councils website will be updated regularly and will clearly outline what is happening with the service. Both communications teams will be in regular contact to ensure a consistency of messaging throughout.

## **8. THE NEXT STEPS**

- 8.1 The proposal to delegate responsibility for the Building Control service to Charnwood Borough Council was reported to Community Scrutiny on 28 October 2020 and the Committee was supportive of the proposals and had no further comments to make. The minutes of Community Scrutiny are attached as Appendix B.

- 8.2 Officers from Charnwood Borough Council are working up a project implementation plan with key steps, including that contracts are agreed in December 2020, to ensure that the delegated service to Charnwood Borough Council commences on 4 January 2021.

<b>Policies and other considerations, as appropriate</b>	
Council Priorities:	Our communities are safe, healthy and connected
Policy Considerations:	None identified
Safeguarding:	None identified
Equalities/Diversity:	An Equality Impact Assessment has been completed in collaboration with officers at CBC. No unmanageable impacts have been identified for customers or employees.
Customer Impact:	Marketing and web site refresh should ensure that there is limited impact on customers and the delegation of the function ensures resilience and continued service.
Economic and Social Impact:	None identified
Environment and Climate Change:	None identified.
Consultation/Community Engagement:	Three week consultation with affected staff and unions.
Risks:	As set out in paragraph 6 of the report.
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