



<b>Report for:</b>	<b>Strategic Planning and Environment Overview and Scrutiny Committee</b>
<b>Date of meeting:</b>	<b>18 June 2019</b>
<b>Part:</b>	<b>1</b>
If Part II, reason:	

<b>Title of report:</b>	<b>BUILDING CONTROL SERVICE</b>
<b>Contact:</b>	<p>Cllr Graham Sutton, Portfolio Holder for Planning and Infrastructure</p> <p>Author/Responsible Officer James Doe, Assistant Director – Planning, Development and Regeneration Sara Whelan, Group Manager – Development Management and Planning</p>
<b>Purpose of report:</b>	To set out proposals to Cabinet for the future delivery of the Borough Council's Building Control service
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. That any views agreed by the Committee be reported to Cabinet for its consideration of these proposals</li> <li>2. That the report is noted.</li> </ol>
<b>Corporate objectives:</b>	<p>The report supports the corporate objectives of :</p> <p>A clean, safe and enjoyable environment – a sustainable and well-functioning Building Control service in the long term will continue to ensure that new buildings are constructed to safe standards in compliance with the national Building Regulations, and that an effective service to deal with the public safety issues of dangerous structures as they arise can continue to be provided and delivered effectively</p> <p>Delivering an efficient and modern Council – The proposals aim to provide a resilient Building Control service in the public interest and offer the best available value for money to the local tax payer.</p>
<b>Implications:</b>	<p><u>Financial</u></p> <p>The financial impact is set out in the part II agenda</p>
<b>'Value for money' implications</b>	<p><u>Value for Money</u></p> <p>The full details are set out in the part II agenda item. The proposals would bring greater resilience in not having to rely</p>

	on more expensive agency staff.
Risk implications	Risk assessment completed
Community Impact Assessment	Community Impact Assessment completed
Health and safety Implications	None directly arising from this report. Provision of a robust and effective Building Control service is, however, essential to ensure that new buildings are safe for their users and to members of the public, and that dangerous structures are dealt with effectively.
Consultees:	Sally Marshall, Chief Executive  James Deane, Director of Finance and Resources  Nigel Howcutt, Assistant Director Finance and Operations  Ben Hosier, Group Manager, Procurement and Contracted Services  Mal Brown, Team Leader Building Control
Background papers:	Appendix 1 - Financial analysis of DBC in-house service vs HBC transfer  Appendix 2 – HBC three year forecast.
Historical background <i>(please give a brief background to this report to enable it to be considered in the right context).</i>	Regular reports to this Committee have outlined continuing issues with securing permanent staff for the service and dealing with a changing competitive market for Building Control services. The proposals follow an evaluation of options for the future of Dacorum Building Control in the light of this.
Glossary of acronyms and any other abbreviations used in this report:	BC - Building Control  HBC - Hertfordshire Building Control  AI - Approved Inspector  Teckal company - the Teckal exception allows a public authority, in specified circumstances, to procure direct from an external company in which it has control similar to that which it exerts over its own departments.

## Background

1. This report sets out proposals to transfer the Council's Building Control Service to Hertfordshire Building Control Ltd.

2. Given that the business case to justify these proposals to transfer a competitive and fee-earning Council service to another organisation has implications of a commercial nature, and will affect staff currently employed by the Council, some issues are of a confidential nature and not appropriate for publication. These matters are covered in a separate report under Part 2 of this meeting agenda.
3. The Dacorum Building Control service discharges the Borough Council's statutory function under the Building Act 1984 to consider the compliance of proposals for built construction works with the nationally-set building regulations. It is a critical function to ensure that new buildings are constructed to standard to make sure they are safe for their users and members of the public, and that environmental performance standards, such as insulation and energy efficiency are met. The Council sets and collects fees for applications under the Building Regulations.
4. Crucially it also runs the Dangerous Structures service, again a statutory responsibility, to respond 24 hours a day, 7 days a week to emergency situations where there is a risk to public safety where buildings have collapsed in whole or in part, or have become unstable. This service is non-fee earning and has to be directly funded by the Council.
5. Building Control, though a statutory function of the Council, is one that can be provided by private sector operators – Approved Inspectors (AIs) - as well. The service has to maintain all records of all applications that are dealt with by other operators, and also the Competent Persons' Scheme, where work in such areas such as electrical and gas installations and double glazing that would ordinarily require Building Regulations Consent can be carried out without express approval by accredited ('Competent Persons') contractors.
6. Dacorum Building Control is currently managed in-house through the Planning, Development and Regeneration service. Competition from private sector competitors or Approved Inspectors in the Dacorum area is high and has been growing over the past few years. Also, the supply of qualified and experienced professionals is low, giving vulnerabilities over sustaining income, cost pressures on staffing and resilience in service delivery.
7. Approximately two years ago the Building Control (BC) service suffered from most of its permanent professional Building Control Officers leaving, reduced caseload and income and an increasing amount of work going to the private sector (Approved Inspectors). Since June 2018 a new BC Manager, a change in temporary members of staff and a great effort from the team to work in a more efficient customer focused way has resulted in a turnaround in income, improved customer service and excellent reputation.
8. However, the Council still cannot recruit permanent members of professional staff on the current pay structure and have tried three times in the past year. The market for BC Officers is very competitive and as there are few qualified and experienced offers in the market, salaries the Council is able to offer are not competitive with a growing private sector and agencies employing professionals who are able to command high daily rates in the current market. This lack of permanent staff makes the continuity and resilience of the service fragile, relying on temporary members of staff to deliver our statutory functions including dangerous structures.

## Current cost of running service

9. The 2018/19 net budget is a cost to the council of £200k, including support service recharges of £180k. This includes an income level of £597k per annum. However, this financial position is based on the cost of staff on the Council's pay scales. As the service currently relies on more expensive agency staff, the cost is significantly higher: the 2018/19 budget outturn recorded a net cost to the Council of £360k.

## Options going forward

10. The following options have been reviewed and discounted including:

	Option	Reason why discounted
1	<b>Retain in house service with increased salaries and investment to develop the services offered</b>	Breaks the established pay structure, with the risk of leading to financially unsustainable salary cost pressures and inflation from other Council services. Risk also that resilience issues arising from professional shortages and competition from other providers will not be solved.
2	<b>Retain service in house but on a reduced level</b>	This option would see the Council provide a minimal service with the aim of reducing salary costs and accepting that significant workload and income would be lost to competitors. It would not deliver quality and would damage DBC reputation in development industry, also an expensive option as need to retain minimum 3 temporary members of staff.
3	<b>Partnership or merger with St Albans City and District Council Building Control service</b>	Potential resilience benefits are not proven, as SADC is also struggling to recruit even though it has higher pay levels.
4	<b>Outsource to an external provider</b>	It is an uncertain process in terms of the end price and quality of service, is expensive and time consuming to undertake and, given the uncertainty regarding additional future statutory responsibilities, may attract unknown additional costs. Experience to date has shown mixed results with some councils having taken the service back in house.

	Option	Reason why discounted
5	<b>Form an arms-length service organisation</b>	Taking the form of either a local authority controlled company or a mutual organisation, this would provide greater freedoms for the service with the opportunity to make a profit and set salaries at market levels. These freedoms would however be constrained by procurement regulations should the services provided by the new service, and income generated from them go significantly beyond those provided by the current in-house service. It would not necessarily resolve the resilience issues of having a relatively small service in comparison to that of HBC or AI competitors.

11. The recommended option is to join Hertfordshire Building Control Ltd (HBC) as an eighth member. HBC is owned by and carries out the function of the BC service on behalf of seven local authorities in Hertfordshire, namely Borough of Broxbourne Council, Hertsmere Borough Council, Three Rivers District Council, Hertsmere Borough Council, East Herts District Council, Stevenage Borough Council and Welwyn Hatfield District Council.
12. HBC was set up by these Councils to run their building control services, against a background of diminishing service resilience at district level and rising competition from private sector providers (Approved Inspectors (AIs)). Hence the original colloquial name of 'Herts 7'. Its website is <https://www.hertfordshirebc.co.uk/>.
13. The seven Councils established a holding company, Broste Rivers LA7 Ltd., which it wholly owns. This holding company operates Hertfordshire Building Control Ltd.
14. HBC is effectively a consortium of local authority BC services that have joined in order to create savings and build resilience across each local authority. The consortium delivers a modern service that is competitive with AIs. This is important as the savings associated with solely reducing the number of building control managers would not have been sufficient to maintain a self-financing service.
15. HBC has been up and running since August 2016 the consortium was originally set up to provide resilience to the seven Councils. All staff were transferred to HBC under the TUPE regulations and it has recently consolidated all staff to a single office in Welwyn Garden City. The income they achieve has increased year on year. It returned a profit in 2018/19 and the business plan for the next 3-5 years shows anticipated increase in income year on year.
16. If this recommendation is agreed full membership would entail HBC running all building control services for DBC from its base in Welwyn Garden City, through its current 'M25' area team which currently covers Broxbourne, Hertsmere and Three Rivers and would be expanded to include the Dacorum area.
17. HBC offers a quality service to its customers and has a good reputation in the market. The team focuses on bringing trainees into the group and supporting them through qualifications to becoming a BC Officer, this as well as increased salaries and opportunities for salary bonuses provides resilience in terms of

staff. The cost of joining HBC and annual financial position within DBC if we join HBC is included in Part 2 of this report.

18. DBC would have equal representation on the HBC Board, which is likely to be at Assistant Director level or above. The HBC Board meets every two months and is key in driving the company forward in an ambitious way. The DBC representative would be clear to ensure quality and resilience are maintained whilst providing value for money.
19. The DBC BC service currently employs five permanent staff: one Building Control Officer, one trainee, and three technical support assistants. There are five vacant posts: one team leader, three Building Control Officers and one trainee. The five permanent staff would be eligible for TUPE transfer to HBC.
20. The discussions with HBC have shown that they would welcome DBC and the existing permanent members of DBC staff would transfer to HBC on the same terms and conditions as existing, though the move would include a new office location in Welwyn Garden City. If the proposal are agreed, staff consultation will be carried out with the team to accommodate their preferences where ever possible. This would include paying travel expenses for the first year to accommodate the new location approximately 15 miles from Hemel Hempstead.
21. Members should note that under the proposals to join HBC, or any other provider, the statutory responsibility to provide BC services still remains with the Council. Should DBC withdraw from the partnership in the future, or it fails, the responsibility for providing the statutory services would revert to DBC.

### **Finance and procurement**

22. All financial issues associated with operating costs would be dealt with by HBC once DBC had fully joined as a member. It would be responsible for all costs but would gain all the fee income. All details of finances are included in Part II of this report as it contains information relating to the financial and business affairs of the Council.
23. DBC's statutory responsibility as a BC authority remains with the Council. However, joining this local authority partnership by awarding a contract directly to HBC requires no procurement exercise as it is exempt under Regulation 12 of the Public Contracts Regulations 2015 (HBC being set up as a Teckal company), and means all BC services would be transferred to HBC. This will include determination of all building control regulations applications, responding to dangerous structures (24 hours a day, all year round) and maintenance of all administration records (FOIs, land charges searches etc) management of the competent persons' register.
24. A contracting authority may directly award a contract to a Teckal company without the need to put it out to tender as long as specific conditions around control, functionality and ownership are met. In addition to these conditions, a minimum of 80% of the Teckal companies' activities must relate to the tasks entrusted to it by the contracting authorities'(s), should more than 20% of the Teckal companies' activities take place in the open market, then the company would be considered to be commercial in nature and any contracts awarded directly to it under Regulation 12 would be considered illegal and a breach of the Regulations.

## Next steps and timescales

25. If Cabinet agree this recommendation the next steps would be:
- a) Carry out consultation with staff over transfer arrangements to HBC
  - b) Officers from the legal, procurement, finance and Planning, Development and regeneration services will negotiate and agree final terms and conditions with HBC
  - c) carry out further due diligence on the actual transfer of data in back office systems
  - d) consider the impact on staff as part of TUPE arrangements
  - e) at appropriate time carry out engagement with customers and partners about future of DBC, embracing this as a positive move providing larger opportunities
  - f) aim to have the transfer of the BC service to HBC concluded by the end of September 2019.

## Conclusion

26. HBC has a three year business plan which supports their predicted growth and their past three years of accounts show an increased income year on year. HBC benefits from the LA-based building control services that bring in a solid level of income. The advantage of DBC joining is that it has the ability to influence the business model. It offers resilience with a flexible workforce across Hertfordshire. Financially it would at the present time eliminate the need for extra spend that DBC has on agency employment. There is the scope for profit share as the business develops, though there is conversely the risk of liability for losses on a 1/8th share basis.
27. The recommended option to join HBC would provide resilience and quality whilst being good value for money. Remaining in house is not an option. The next steps would be to carry out staff consultation and agree terms and conditions with HBC which enable DBC to be the eighth member.