

BUDGET AND PERFORMANCE PANEL

Building Control Trading Account and Alternative Trading Options 24 February 2015

Report of Chief Officer (Regeneration & Planning)

PURPOSE OF REPORT

To update the Panel on the progress being made to make alternative arrangements for the operation of the council's Building Control operation.

This report is public.

RECOMMENDATIONS

- 1) That Budget and Performance Panel note the position taken by South Lakeland District Council in relation to investigations into the potential for a shared building control service.**

1.0 Introduction

- 1.1 The Council has a statutory duty under the Building Act 1984 to enforce the provisions of the Building Regulations. Traditionally this has meant that the Council determines applications for Building Regulations Approval and inspects the construction of new development to ensure that it complies with the approved plans. In addition to determining applications there is also a range of other statutory duties associated with the operation of the Building Act. These include enforcing the Building Regulations and dealing with dangerous buildings and structures.
- 1.2 The Council are not the only organisation who can provide Building Control services. Although the Council is the sole regulatory body, private sector companies or individuals can achieve Approved Inspector status, which allows them to be licensed by the Government to offer a Building Control service, thus placing them in competition with local authorities. This means that persons wishing to carry out development have a choice of submitting plans to local authorities or to Approved Inspector bodies. In addition to vetting applications for compliance with the Building Regulations, developers can also ask Approved Inspectors to supervise construction works. There are however functions of Building Control legislation such as the main enforcement function which can only be undertaken by local authorities so there is never an option for councils to simply cease operating a Building Control service.

- 1.3 Since the introduction of competition and fees for determining applications and carrying out inspections, local authorities have been required to operate Building Control Trading Accounts separate from the budgets they set aside for carrying out their other statutory work. It is normally good practice to achieve a 'break-even' position over a rolling three year period, although five years may be more appropriate where unusually large surpluses or deficits have occurred. The general idea is to set fees simply to cover the Council's costs of operating the service. Some surpluses are allowed if they are invested directly back into improving the service. The competition from the private sector means however that Councils have to take care not to find their trading accounts in deficit and this means constant pressure to carefully monitor operational costs and business levels.
- 1.4 Until 2007 this Council ran its Building Control Trading Account in a constant surplus. This was primarily due to favourable trading conditions arising from the fact that the relative geographical isolation from major urban conurbations meant that competition from Approved Inspectors operating in those areas was rare. The Council was not complacent because it always anticipated that at some point there would be a growth in operational competition from Approved Inspectors which could change the situation. Around 2007 a number of local companies gained Approved Inspector status and the Council for the first time saw private competition with lower overheads and costs undercutting its plan vetting and inspection services, taking work away from the Council. The council's own Fair Pay process also had an impact on its Building Control operation as the downgrading of Building Control officer posts resulted in a steady flow of qualified staff leaving the Council to work for Approved Inspectors who were able to offer better salaries.
- 1.5 After the start of the current recession in 2008 the effect of trade diversion to Approved Inspectors was exacerbated by a significant downturn in the number of applications received by the Council, and an associated loss of fee income. In response to the economic downturn and the consistent pressure from competition steps were taken to review the structure of the Building Control Section during 2009, and in April 2010 the section was significantly reduced in size from 13 staff to 5 and is currently only budgeting for 2.7fte posts. It was hoped that this reduction in the operating cost of the service would enable the trading account to break even or at least generate a small surplus to reduce the deficit which had been generated. It became clear however that the trading position was not improving sufficiently to give confidence that a balanced budget can be achieved and in particular the Trading Account now carries a consistent deficit. In short, the current means of operating causes a higher cost to the Council than the costs associated with simply providing its statutory duties.

2.0 Details

- 2.1 By the start of 2014/15 it had been concluded that the Council needed to find another way to operate its Building Control function in the new business environment in which it finds itself. It cannot simply stop operating a service because it is required to provide one by statute. It can however look at a number of options, either to:
- a) Work with another local authority to provide the service;
 - b) Maintain the statutory function and outsource plan vetting and possibly inspections; or,

- c) Contract a third party organisation to provide both the statutory and plan vetting/inspection functions on behalf of the Council.

2.2 After establishing its ethos as an Ensuring Council the preference was to work with another local authority and hence keep the Council's Building Control operations firmly within the Local Authority Building Control (LABC) organisation. After discussions with a number of neighbouring local authorities it was concluded that the best way forward was to work with South Lakeland District Council. The overriding advantages were that:-

- The two authorities share a contiguous geographical boundary;
- The two authorities generally work with the same range of architects, plan drawers and building companies; and,
- South Lakeland Building Control has a strong brand that is currently more attractive than the City Council's.

2.3 A report to Cabinet on 27th May 2014 sought authority to enter into negotiations with South Lakeland District Council (SLDC) to formally investigate the setting up of a shared service. The simplest model was to delegate the operation of the Building Control services to SLDC and in return, for the City Council to pay SLDC a management fee for those operations that relate to the City Council's geographical area. To assist in the transition of the two operations both Councils have engaged the support of Urban Vision (directly commissioned by SLDC) - an outreach operation of professional technical services belonging to Salford City Council - to provide managerial and project support during the period. This was primarily to compensate for the fact that the City Council's operation had by then depleted to only two officers working on a 1.7fte basis, which is not sustainable even with the reduced workload the City Council receives (and which has the potential to put the Council at some risk in terms of their capacity to respond to statutory matters such as investigating dangerous structures).

2.4 The last 9 months has seen little progress with the project due to a number of aggravating factors. Firstly the staff resource put in place by Urban Vision has needed to be used considerably more to cover operational matters in Lancaster District such as application processing and dangerous buildings than originally anticipated (the latter has witnessed almost a 30% rise on the previous calendar year, and the officer timescales for dealing with these matters can be complex.) This has left little available time for scoping the potential for increasing the business. Secondly workload at SLDC appears to have increased reducing their available capacity to pick up work in Lancaster District to support the City Council. This understandably has an impact on the efficiencies evident to both Councils from sharing capacity, as current staffing costs could not easily be reduced to match the workload.

2.5 It is also fair to say that City Council officers have felt that the appetite for shared service at SLDC seems to have reduced. There may have been reluctance amongst officers to work further south of their district and the essential ingredient of protecting workforce from involuntary reductions by opening new business areas has diminished as Approved Inspectors business further north has reduced in influence. Various financial analyses undertaken by SLDC officers has shown that even with access to a wider business area and the receipt of a management fee from Lancaster City Council, a significantly improved trading account position could not be achieved and that costs could potentially increase for Lancaster.

- 2.6 By December 2014 SLDC's Management Team concluded that there is an insufficient business case to enter into a shared service operation with the City Council, and that decision was shared verbally with this Council in early January this year.

3.0 Other Options Available To Pursue

- 3.1 The City Council now finds itself with the continuing problem of how to provide a statutory Building Control service which has the potential to break even on its trading account. This essentially means that it has to try and provide a statutory service for enforcement and dangerous buildings (which are a cost to the local tax payer) but at the same time provide for the handling of any building control applications submitted to it at nil cost, covered by fees for building control applications. What the council cannot do in law is simply provide minimal statutory services and decline to handle applications, turning that business over to the private sector.
- 3.2 It would be a relatively simple matter if the Council could contract out handling applications to another body with that cost being covered by fees. The only cost to the Council would then be its statutory service. However the challenge is trying to find a cost neutral approach in itself. Operationally it is not desirable or practical to outsource the statutory activities as they often require immediate on site presence within the district (not practical for a distant provider) and the record keeping and decision issuing process is best handled by existing compatible ICT systems.
- 3.3 The vetting and inspecting of building regulations applications has to be carried out by appropriately qualified professional bodies so it could only be outsourced to another local authority, approved inspectors or organisations such as Urban Vision and Carillion which provide technical services for local authority clients.
- 3.4 The only other option would be to invest significantly by increasing the staffing establishment again to build an operation capable of winning back workload which has been lost to the approved inspectors. The undesirability of this approach will be considered in the options appraisal in the next section of this report.
- 3.5 These options will now be investigated with a view to trying to find the most cost effective means to cap the costs of the council's statutory duties. The aim will be to ensure that fees set for the provision of plan vetting and inspection services will be as close to cost neutral as possible.

4.0 Options analysis

- 4.1 Option 1: To try and find another local authority to engage in a shared service operation with. This option has been previously explored with Preston, Wyre and other Lancashire Districts. None have sufficient spare capacity within their operations to handle Lancaster District's application processing work and travelling distances for inspections of building work becomes time consuming and impractical, thus avoiding the potential for economies of scale.

- 4.2 Option 2: To maintain and resource the City Council's statutory Building Control duties in house, and to seek to outsource the application handling process on as close to a cost neutral basis as possible. This is considered to be the most practical option for the council to pursue. If it accepts that the private sector will continue to win 70% of plan vetting and inspection work locally it only needs to provide an alternative where applicants request the local authority to make it available. By outsourcing that service the council will only need to budget to provide the statutory (non-chargeable) element, and costs to cover resilience when more resources are needed. This may lead to stabilized or even reduced costs. If contract arrangements can be reached to cover all outsourced costs through fee income then this is potentially the best option.
- 4.3 Option 3: To increase staffing levels on the existing establishment to recruit the skills and talent needed to compete with the private sector locally and recoup lost business. There would be no guarantee that such an investment would recoup income lost to the private sector. Since reducing the size and capacity of the City Council's service reputational loss has also occurred. This would require considerable investment in time and marketing expertise to reverse, whilst at the same time considerable in-house managerial support would also have to be diverted to the task. With other major projects facing the Regeneration and Planning Service in the next five years, such a diversion of resources would not be justified. There would also remain the ongoing risk of ongoing staff turnover as the private sector competition is able to offer more competitive salaries.

5.0 Officer Preferred option

- 5.1 Option 2 is considered the best in the circumstances. As an Ensuring Council the City Council will ensure that statutory protection to deal with dangerous structures and the range of statutory duties remain provided by the local authority, whilst at the same time providing an option for applications processing as an alternative to the private sector locally. Subject to procurement rules there remains an option for the outsourced work to be provided by public/private sector partnerships rather than simply by a private sector contractor, so the council's wish to maintain public sector provision of a sort may be possible to achieve.
- 5.2 Members should note that at this stage it is anticipated that in order for outsourcing to be strictly cost neutral a range of fees to be set might be higher than those operated by the private sector locally. However they need to note that the intention here will not necessarily be to provide direct competition for the private sector, but a choice of an alternative albeit possibly at a higher cost. It is the latter which maintains the Councils statutory duty at a minimum level practical, and in Officers' view is the only practical alternative in the current economic climate.

6. Conclusion

- 6.1 Officers will continue to investigate the options as set out above, and will be reporting to Cabinet in the near future to enable a decision to be taken.

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The council's duties to enforce the Building Regulations in their administrative area are primarily aimed at protecting the health and safety of the public from unsafe or inefficient building work.

LEGAL IMPLICATIONS

The council has received legal advice from experts in this field which carefully outlines the options available to it to continue to comply with its statutory duty to enforce the Building Regulations. All exploratory work undertaken has been guided by this advice.

FINANCIAL IMPLICATIONS

There are no immediate financial implications arising at this stage as the City Council has continued to budget for a deficit (£59.6K in 2015/16) as part of the current budget process.

Following on from being agreed by Cabinet in May 2014, the City Council had entered into formal negotiations with South Lakeland District Council to provide its Building Control service, however for the reasons set out in the body of the report, this is no longer considered feasible.

At this stage, it is not possible to provide further detailed financial implications regarding any possible future level of savings, until the final delivery model that secures the best value for money for Lancaster has been determined. This will need to be reported back to Members, i.e. Cabinet prior to entering into any formal contractual arrangement.

It is re-iterated at this stage, that Option 2 appears to be the only likely option to achieve cost reductions for the Council going forward, whilst recognising that in the current climate we may not be able to remove the deficit entirely.

Members should also note that in the interim period the current informal arrangement will continue, whereby Urban Vision undertake work beyond current in-house capacity in order for Lancaster to discharge its statutory duties.

OTHER RESOURCE IMPLICATIONS

Human Resources:

Under the option being considered for shared service there was the potential to TUPE transfer staff to work for the local authority partner. The option now being advised seeks to retain the existing posts on the council's establishment.

Information Services:

The option now being promoted would have far less implications for Information services than shared service provision.

Property:

None

Open Spaces:

None

SECTION 151 OFFICER'S COMMENTS

The S.151 Officer has been consulted and has no further comments to add.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Trowers and Hamlin Legal advice and Options note for Building Control Services February 2013

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