

## **Cabinet – 24 April 2013**

### **A New Approach for Building Control - Walsall Council and Birmingham City Council ACIVICO Proposed Joint Venture Company**

**Portfolio:** Councillor Adrian Andrew, Deputy Leader, Regeneration

**Related portfolios:** None

**Service:** Planning and Building Control

**Wards:** All Wards

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Summary**

This report considers the sustainability of delivering the Council's building control service and sets out a number of options for consideration as to how the service could be delivered in the future. The report concludes by recommending that the option of delivering the service by entering into a jointly owned company with Birmingham City Council should be followed and that if Cabinet agrees to this a full business case will be presented for consideration at a subsequent meeting.

#### **2. Recommendations**

That Cabinet agrees that officers negotiate the creation of a jointly owned company with Birmingham City Council, through its wholly owned trading company Acivico Building Consultancy Limited (ABC Ltd), and prepare a detailed business case based on a 50/50 representation on the board of directors.

#### **3. Report detail**

- 3.1 Nationally local authority building control is suffering from an increase in competition from private sector companies who can undertake building regulation work as Approved Inspectors (AI's) resulting in the loss of valuable fee income particularly from commercial projects. This is at the same time when the average age profile of staff is rising and the experience levels of teams are dwindling through retirement and younger colleagues being recruited by AI's. Walsall is no

different to the national picture and although matters are not acute at present despite the recent loss of a team leader and two building control officers the service is under financial strain due to the under recovery of fee income.

- 3.2 Customers also report that they would prefer to deal with a single organisation rather than a number of different local authorities which has driven many of the larger companies to favour using a single AI on a national basis. Local authorities have a statutory duty to provide a building control service and therefore it is imperative that options are considered in order to maintain the quality of service to Walsall residents and businesses and address the financial challenges.
- 3.3 There are four options that have been considered to take the service forward:
- Retaining the status quo (option 1) would not address in the medium and long term the financial and staffing issues that would become acute. However, the service would be able to maintain service in the immediate future if there were no further loss of experienced staff.
  - Outsourcing the service (option 2) would not meet our customers' demand for a single organisation to work with on building control matters across the area. This option would also result in commitment to a contract over several years that is likely to cost the Council more in the longer term to deliver and at best, with no better service quality and potentially a poorer service.
  - Option 3 is a joint Black Country or other local authority shared service partnership whereby resources would be shared under a single service arrangement
  - The formation of a new company with the subsidiary of Birmingham City Council's wholly owned trading company, Acivico Building Consultancy Limited (option 4). Options 3 & 4 are discussed in more detailed below.
- 3.5 Following numerous discussions over a long period of time with the other Black Country authorities it is clear that there is little appetite amongst them for progressing a Black Country approach in the near future, even though they are also experiencing difficulties due to staffing levels and budgets. As Walsall could not deliver this on a unilateral basis this option has been discounted as undeliverable in the short term. It may also be seen by customers that this represents more of the same but on a larger scale and would not necessarily provide the step change that will reverse the trend in the valuable commercial projects in particular and see them return to local authority building control.
- 3.6 Option 4 is to create a jointly owned company with Birmingham City Council through its wholly owned trading company, Acivico Building Consultancy Limited (ABC) with 50/50 representation on the board of directors. In addition to more expertise and resources to provide better services there are trading advantages that could materialise from pursuing this option. These include being able to trade outside the administrative boundaries of Walsall by approximately 10% of turnover of the company. This would clearly bring with it potential financial advantages which could result in securing more lucrative commercial work and

lower hourly rates being charged to customers, including work undertaken on behalf of the Council. It would also enable Walsall to host the administrative offices for the eastern area of the Black Country (if not the whole sub region in the future) which would be beneficial to the access of the service by citizens.

- 3.7 Birmingham Building Control was the largest building control in the country, well regarded by industry across the country. It has taken this resource and reputation into the new company arrangement and is looking to grow its construction and environmental services to the sector across the region and beyond.
- 3.7 Should the recommendation be agreed by cabinet the negotiation with Birmingham City Council will be guided by the principles that the proposal maintain and in due course improve the service provided to Walsall customers and that it manages the cost pressures that are increasing under the current operating conditions for local authority building control services.

#### **4. Council priorities**

As expressed in the Corporate Plan 2011/12 – 2014/15, part of the Council's shared vision for the Borough is that Walsall will be a great place to live, work and invest, where “there are more and better jobs for local people” and where “there are a wide range of facilities for people to use and enjoy”. One of the three priorities for the Council is the economy, and if Cabinet agrees that officers prepare a business case for consideration based on a joint venture with a well resourced and experienced partner it is considered, from experience and from what companies tell us, that more customers and importantly larger developers and inward investors will choose to use local authority based building control. This will enable the Council to deliver a more effective end to end process to customers in the interests of investment in the borough. This would also be in line with some of the objectives as set out in the Marmot Review by creating job opportunities through further investment in the Borough.

#### **5. Risk management**

- 5.1 Current service performance indicators are set within ISO 9001 requirements and this will need to remain for whatever option is chosen. If Cabinet agree with the recommendation to develop further a business case with ABC Ltd they too have this accreditation and the new company will seek to retain accreditation. The proposed change is driven by improving the customer experience and offering a better local authority based building control service through ensuring adequate staffing levels to support the citizens needs – e.g. first stop shop support and to retain vital linkages between planning and other Council services.

- 5.2 Whatever option is chosen it is important to consider the impact on staff and how it undertakes its service. If the ABC option was agreed the 50% control of the board of directors would be able to influence or indeed withdraw from the company if required.
- 5.3 Another area of risk to consider for either option (as explained below) is the risk of not covering the Council's current central support service (CSS) costs although higher charges for the use of the Civic Centre may be justified if the ABC trading company option is pursued than that apportioned to a dedicated Council service. The exact details of these costs will not be known until the full business case has been developed.

## **6. Financial implications**

- 6.1 Building Control is split into two cost centres, a fee account and a revenue account. The fee account is a ring fenced account and relates totally to the fees received from applicants who submit building regulations applications. The overriding objective is that the authority must ensure that, taking one financial year with another, the income derived by the authority from performing chargeable functions and providing chargeable advice ("chargeable income") as nearly as possible equates to the costs incurred by the authority in performing chargeable functions and providing chargeable advice ("chargeable costs"). Fees are also adjusted accordingly in order to cover the costs of providing the service. Given the down turn in the economy the service has drawn on the balance account over the last two years and it is expected that this will be the case again this year.
- 6.2 The revenue account is funded from the councils own (currently £211k) which pays for the team to undertake work including dangerous structures, enforcement, safety at sports grounds, advice to trading standards on rogue builders and disabled accessibility works (under part M of the Building Act). It is not possible under Cipfa regulations to transfer monies between the two accounts.
- 6.3 Under any new arrangements the building regulations would still be delivered by application fees without any finance from the council. The work currently undertaken from the revenue account would be undertaken by the new company and paid for on an hourly rate by the council for the revenue work that it wants done in its area if the ABC option was to be pursued. Currently the revenue includes staff and fixed and variable costs based approximately on a 30/70 split with revenue representing the 30% and the fee account representing 70%.
- 6.4 Until actual fees are set in any new arrangement it will be difficult to assess potential costs. If the ABC option was pursued there are differences in hourly rates charged with ABC charging at around £61 per hour for fee work and

Walsall building control charges £51 per hour (currently under review). It would be for the directors of the new company or any joint Black Country shared service to set the costs. If the ABC option was pursued and the costs to Walsall were based on a fee of £51 per hour then this would equate to approximately 4,500 hours work with respect to the existing revenue budget or 3,770 hours based on £61 per hour. This would equate to approximately 86 hours per week based on £51 per hour or 72 hours per week based on £61 per hour or to approximately 2.3 officers work per week at £51 per hour. It is considered therefore that this would equate to approximately the same amount of hours currently undertaken by the team (of 8 officers).

- 6.5 CSS costs of £92k are currently recovered against Building Control.
- 6.6 These form part of the total revenue budget and therefore if the service is moved to a new company or a joint Black Country shared arrangement these may not be paid directly back to the council to support back office functions, although the apportionment for the use of the building would need to be paid to the council if it is operated from the Civic Centre. It is also considered that as Walsall will still need to operate its ICT systems based on the current computer system (as these are different to those used by ABC or other Black Country authorities) the payment to the council's ICT services will also need to be made in the initial years before the company agreed a common solution.
- 6.7 Due to the economies of scale available if the new Building Control arrangements were put in place, and the fixed cost nature of many of the CSS costs, it would be difficult for the relevant back office services to save these amounts in full and therefore there is likely to be a pressure either on the contribution to the new company / shared service or on the council in having to effectively pay for the costs twice (paying the company to do the above and paying for the facility here). There could also be other non CSS impacts such as use of the print room. However, as other shared services are brought forward in other areas of the council savings may well be able to be achieved in the future.
- 6.8 A full business case in terms of known / actual costs of undertaking this venture will develop as discussions progress with ABC. Discussions would need to ensure agreement to use the Civic Centre as a base for officers to cover the borough of Walsall and potentially a wider area whilst avoiding the council incurring additional direct costs. The assessment of costs also depend on the setting of the hourly fee as discussed above and this will need to be agreed as an essential part of a full business case.
- 6.9 The business case will also need to identify costs associated around quality and assurances relating to quality assurance and meeting of spikes in demand. Other costs including costs associated with the gaining of admitted body status for the pension scheme will need to be established further but it is anticipated that the

project stage will not incur additional costs to the council over and above the existing controllable budgets for the service.

## **7. Legal implications**

- 7.1 There are considerable legal implications for the Council to consider in entering into a shared or joint company arrangement, and colleagues in legal services have been and will continue to be involved in the drafting of any new constitution. If the ABC option was pursued The Local Government Act 2003 sets out the requirements that need to be followed before a local authority can establish a trading company and the Council's Partnership Toolkit will also need to be followed.
- 7.2 ABC was established as a subsidiary to Birmingham City Council's wholly owned trading subsidiary Acivico Limited, in April 2012. Birmingham City Council has transferred all of its Building Consultancy Staff to ABC and it is now effectively run (as a special purpose vehicle company) to deliver the building control service for the City Council. As Acivico Limited is a wholly owned subsidiary of the City Council, ABC can also provide traded services for a value up to approximately 10% of its turnover. Effectively it could therefore act as an AI outside of Birmingham City Council's administrative boundaries, which may add to the threat of Walsall Council's Building Control losing more work to other (AI) providers.
- 7.3 The ABC option would create a new subsidiary company jointly owned by Walsall Council and ABC that would effectively be governed by a board of directors based on a 50/50 split. ABC has itself adopted Articles of Association which it is seeking to use in relation to any of its subsidiary companies going forwards. These incorporate a list of reserved matters that the directors of the subsidiary company must collectively make decisions in relation to.
- 7.4 If Cabinet were to agree to pursue the ABC option further the level of influence that any one Director of ABC and any subsidiary of that company has in relation to the company is limited. Walsall Council's influence (and the influence of its nominated directors) would therefore also be restricted and effectively the company could only make decisions on the listed matters by a committee of Directors. These restrictions would equally apply to any Director appointed by ABC (therefore effectively from Birmingham City Council). The disadvantage of this set up is that it is in practice difficult to have a disagreement between the Directors as there is no alternative to resolving a difference in opinion, other than breaking up the new company and reverting back to Walsall having its own in-house Building Control function. All Directors will not receive any form of remuneration. Both options would also require an appropriate 'client side' officer to receive and manage the delegations from Council in order to meet Constitutional requirements given the statutory nature of the service.

## **8. Property implications**

If the ABC option is pursued the new company would in part operate from the Civic Centre in Walsall and in part from ABC's current premises within Birmingham City Council's offices. Effectively this would mean that resources and marketing etc. could be shared. The use of premises would need to be negotiated for a shared service option although it is expected that some use of the Civic centre would also be required.

## **9. Staffing implications**

Either option would require Walsall Council employees to have their employment transferred over to a new shared service or company or there would need to be a period of staff and union consultation before the decision is made to proceed with this proposal, in addition to Cabinet's future consideration and subsequent approval of the business case.

## **10. Equality implications**

10.1 It is considered that the citizen's of the Borough will welcome and benefit from either option as the local authority service that most citizens will be aware of and are likely to use will be enhanced in terms of capacity and overall capability.

10.2 An equality Impact Assessment has been carried out on the implications of this Cabinet report. This assessment concluded that there will not be any negative implications for the characteristics protected by the Equality Act 2010.

## **11. Consultation**

11.1 Legal Services, HR and Finance have been fully consulted and have been part of the officer group that have investigated the potential ABC option.

## **12. Conclusion**

Taking into account the above analysis it is considered preferable to pursue the ABC option. This would enable the service to form a trading company with an established and well resourced partner enhancing the services reputation and capacity. It would enable services to be rationalised with access to Birmingham City Council's experienced and specialist staff and thereby improving the offer to citizens and developers alike. It would also enable the service to trade up to 10% of turnover outside of its purpose and therefore offer a potential additional revenue stream. The ABC option would also potentially enable the use of the

Civic Centre to continue as a base that would cover a wider geographic area than just the existing borough boundary. Subject to negotiation it is also considered that sufficient financial control would exist through the 50% board membership and client side arrangement that would enable appropriate hourly rates for work to be charge to the Council that would ensure costs are within existing budgets although this will be established when a full business case is finally produced and reported to a future Cabinet for approval.

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